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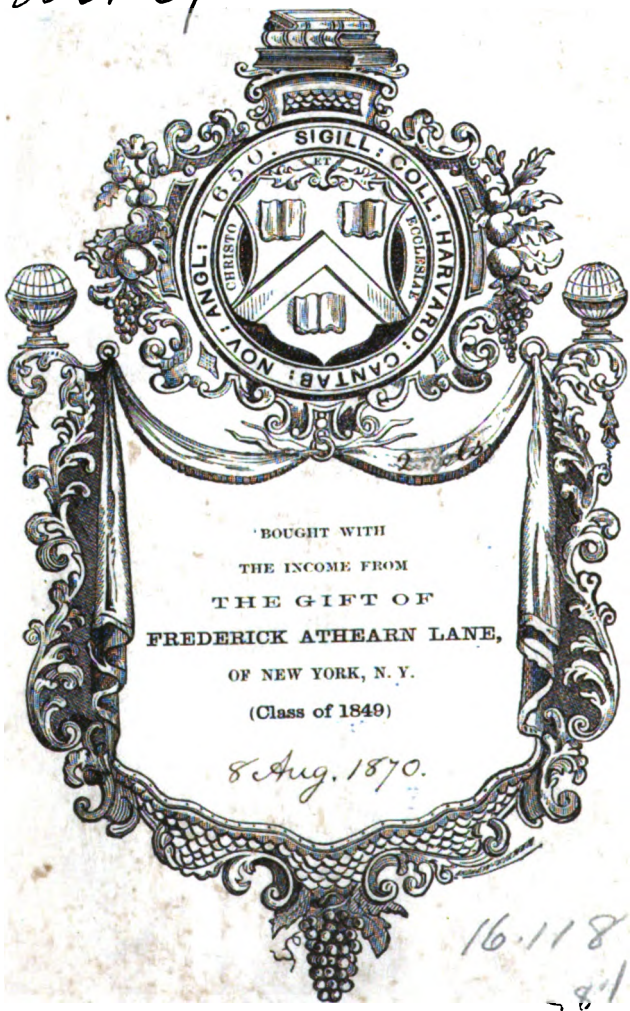


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THE

# MILITARY FORCES OF THE CROWN;

## THEIR ADMINISTRATION AND GOVERNMENT.

By CHARLES M. CLODE.

An armed disciplined body is in its essence dangerous to Liberty: undisciplined, it is ruinous to Society.—BURKE, Vol. V. p. 17.

IN TWO VOLUMES.—VOL. I.

LONDON:
JOHN MURRAY, ALBEMARLE STREET.
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# PREFACE.

I AM unwilling that these pages should pass out of my hands without a few words explanatory of the circumstances under which they were originally compiled and are now given to the Public.

In 1858, by the undeserved favour of the then Secretary of State[1] I became connected with the War Department; and a short experience of the duties that then devolved upon me convinced me that it would be very desirable that I should, as time and opportunity allowed me, collect and arrange all such materials in relation to the Constitutional History of the Army as might in any way be useful to the Public.

When so engaged, it came under my notice that in 1804 the Government thought that the publication of a Work relating to the Army would be of great public utility;[2] and in aid of that undertaking Mr. Dundas wrote to the Speaker of the House of Commons requesting him to give the proposer

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[1] The Right Honourable Jonathan Peel.

[2] "WAR OFFICE, *26th November*, 1804.

"SIR,—I have the honour to enclose you a letter I have received from Mr. G. Harrison, Law Clerk to this Office, and, as the work he proposes to complete will be of great public utility, I feel it a duty incumbent on me to give him every possible assistance to enable him to accomplish his design. I therefore, in the most earnest manner, request you will permit him to have access to any documents you can furnish him with, that may be useful in carrying his plan into execution.

"I have, &c.,

"W. DUNDAS."

"*Right Hon. the Speaker.*"

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of it access to any Parliamentary documents that could furnish him with useful information. What was the result of the application I do not know—except that no such History was published—but this incident confirmed my previous impressions, and encouraged me to think that, waiving all pretensions to edit a work of any such importance, I might produce one of some practical utility in the present aspect of Army affairs.

Under these circumstances, to insure to the Reader some materials of Historic value, I laid the facts before the Secretary of State in September, 1868, asking his permission to print Extracts from the Records of the War Office and Ordnance Department, which being readily granted, I prepared the present Work.

As the Constitutional History of the Army dates from 1688, I have not thought it necessary—except briefly by way of introduction—to take up the subject at an earlier period. The evils that had resulted to England from a Standing Army *in time of Peace* were present to the minds of the Statesmen of that epoch; and therefore it cannot be a matter of surprise that the "Peers of the Realm," and others acting in the interests of the people, upon the accession of William III., should have endeavoured to make such Constitutional arrangements as would prevent the Army from *again* subverting the Civil Government.

The success of their scheme for "The Administration and Government of the Army" is evidenced by the Political and Social condition of Great Britain from the date of the Revolution to the end of the Crimean War; for not within that period had the Army either encroached, or had the power to encroach, *by its own action*, upon the Liberties or Resources of the civil community.[1]

I have therefore endeavoured to trace the outline of those

[1] See Lord Macaulay's Speech, 71 H. D. (3), p. 746.

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Constitutional Safeguards that were then devised for the security of the Public Treasure, and for the freedom of the People against the possible adverse action in time of Peace of a Standing Army. It will be seen how vigilant the guardianship of Parliament has been over the people's money and liberties; how continually present to the Lords and Commons was the conviction that all Standing Armies are by nature aggressive; and how settled the purpose to prevent, under any circumstances, the exhibition of this aggressive spirit by the Army of England. Hence, notwithstanding the vast increase to its numbers which ensued upon the great War of the French Revolution—the Army continued down to the Crimean War to be the loyal Servant of the State, without once assuming to become the Administrator of the Public Treasure.

That this result was mainly attributable to the distinction recognized and acted upon between the Government of the Army by Military Officers responsible to the Crown, and the Administration of the Army by Civil Ministers responsible to Parliament, no man who considers the subject from a Constitutional point of view will, I think, deny. Those arrangements afforded security to the People; "for I take it," said the late Lord Palmerston, "that the principle upon which the Public Service has been constructed, has been to make one Department a check and a control upon another;" and they recall the remark of the late Sir James Mackintosh, which will be found quoted in the text, that, "whether the union of all these securities be adequate against that most unmanageable instrument of power, a Standing Army, may be doubted, but no *Statesman* ever thought *all* of them were more than enough."[1] In the opinion of some readers, I may therefore appear to attach too much importance to the Constitutional

[1] Chapter VI., par. 22.

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changes that since the Crimean War have been made in the Administration of the Army by the abolishing or changing those Public Departments which formed, as it were, the Outworks of the Treasury, and by the creation of a Hybrid Department charged with Functions so Vast, Miscellaneous, and Undefined.

However, for any statements on this or other subjects contained in the Work, authorities will be found in the Notes; and I may add that I have carefully avoided availing myself of any information with reference to *Departmental* arrangements that cannot be substantiated by reference to Public Documents.

*London, March*, 1869.

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# CONTENTS OF THE FIRST VOLUME.

## CHAPTER I.

### DEFENCE OF THE REALM, AND ERECTION OF FORTIFICATIONS.


| Par. | | Page |
|---|---|---|
| 1. | Defence of the Realm the primary object for which Military forces are retained in arms | 1 |
| 2. | Fortifications and works | *ib.* |
| 3. | The obligation of defending the Realm rests upon the Crown | 2 |
| 4. | Powers of the Crown for the defence of the Realm | *ib.* |
| 5. | The case of Ship Money (1637) | 3 |
| 6. | Undoubted powers of the Crown in ordinary times. Mr. St. John's argument | *ib.* |
| 7. | Extraordinary powers in case of war or invasion | 4 |
| 8. | Judgment of Sir George Croke | *ib.* |
| 9. | „ of Sir Richard Hatton | 5 |
| 10. | Confirmed by Constitutional writers and later decisions | 6 |
| 11. | Means of defence: Fortresses. Custody and care of the same | *ib.* |
| 12. | Expense of maintenance | 7 |
| 13. | No subject could build a fortress without licence from the Crown | *ib.* |
| 14. | The Ordnance Department had the charge of all forts and armaments | 8 |
| 15. | Those fortresses not garrisoned with troops | 8 |
| 16. | Garrisoned by invalids and trained bands | 9 |
| 17. | Fortresses now provided for by Parliamentary votes | *ib.* |
| 18. | Prerogative power of the Crown relied upon till 1798 | 10 |
| 19. | Rebellion of 1715. Compensation for losses and Act of Indemnity | *ib.* |
| 20. | Rebellion of 1745. Act of Indemnity | 11 |
| 21. | Threat of French Invasion in 1798 and 1803 | *ib.* |
| 22. | Mr. Pitt's Defence Acts | *ib.* |
| 23. | Two Principles: 1. Aid to the Crown. 2. Compensation to the subject | 12 |
| 24. | Public Works. Utilization or destruction on future invasion | *ib.* |
| 25. | Power to acquire land held by the War Department | 13 |
| 26. | Defence Act, 1860 | 14 |
| 27. | Patents for Munitions of War | *ib.* |
| 28. | Defence of the Colonial Empire | 15 |


## CHAPTER II.

### THE ARMY BEFORE THE COMMONWEALTH.


| | | |
|---|---|---|
| 1. | The Reign of Charles I. the commencement of Army History | 16 |
| 2. | Division of the reign into two Periods—(1) Up to 1629; (2) from 1639 | *ib.* |
| 3. | First Period (1625-29). General Duty imposed by law on all citizens to bear arms in defence of the Realm | 16 |
| 4. | Standing Army inconsistent with the Constitution. (1.) Pressing of men into the King's service | 17 |
| 5. | (2.) Billets. (3.) Martial Law | *ib.* |
| 6. | Commissions to execute Martial Law | *ib.* |
| 7. | Articles of War to define offences of soldiers. Those of 1625 | 18 |
| 8. | These Commissions frequently issued by the Crown | 19 |
| 9. | Declared illegal by the Petition of Right | *ib.* |
| 10. | Billets. Grievances inquired into by the Commons | *ib.* |
| „ | Petitioned against by House of Commons, 1628 | 20 |
| 11. | Declared illegal by the Petition of Right | *ib.* |
| 12. | The second Period from 1639 | 21 |
| 13. | Pretext for the Establishment of the Army | *ib.* |
| 14. | Coat and Conduct Money | *ib.* |
| 16. | King's Troops armed out of the Militia Armouries | 22 |
| 17. | Martial Law by Commission to the General, and Articles of War | *ib.* |


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Par. Page

18. Judges, &c., declared in Council the execution of Martial Law to be illegal .. .. .. .. 23
19. Proposal for, but no Commission of Oyer and Terminer was issued .. .. .. .. .. *ib.*
20. Proposal of the Lords to grant the General a Commission of Martial Law not agreed to by the Commons .. .. .. .. *ib.*
21. Articles of War issued with the authority of Parliament, 1642 24
22. Raising up a Third Power in the State—the Army—the cause of strife .. .. .. .. *ib.*
23. Militia, and not the King's Army, garrison the Fortresses *ib.*
24. Parliament could not remain neutral .. .. .. .. .. 25
25. Commons open a direct communication with the Army; and were destroyed by the Army *ib.*
26. Supplies raised on Estimate and appropriated .. .. .. .. *ib.*

Par. Page

27. On disbanding Army the grant of half-pay originated .. .. 26
28. Army raised for Ireland under an Impressment Act. Preamble lays down the Constitutional Rule as to Impressment .. .. *ib.*
„ Provisions of the Act. Exemptions granted .. .. .. .. 27
29. Army raised for England by the authority of the two Houses .. *ib.*
30. As to the formation of it .. .. *ib.*
„ Controversy between two Houses of Parliament, 1644 .. .. .. 28
31. Low social condition of the Officers, and its results .. .. *ib.*
32. Officers of the Royal Army, men of higher status .. .. .. 29
33. Strength of the Army may be developed at any time .. .. *ib.*
34. To disturb the Constitutional Safeguards of 1688 unwise .. *ib.*
35. Civil Administration of the Army to be maintained in its integrity .. .. .. .. .. 30


## CHAPTER III.

### THE ESTABLISHMENT OF THE MILITIA.


1. The Militia the Constitutional Force. Early statutes. 1285, 1306 .. .. .. .. .. .. 31
3. Commissions of Array .. .. 32
4. The appointment of Lords-Lieutenant by Crown sanctioned by 3 & 4 Edw. VI., c. 5 .. .. *ib.*
5. Act repealed by 1 Mary, but re-enacted by 1 Elizabeth, c. 16, and then lapsed .. .. .. *ib.*
6. Early statutes revived and the Statutory powers for appointment of Lords-Lieutenant lost 33
7. Power of the Crown over the Militia established in Charles II's reign .. .. .. .. .. *ib.*
8. Outline of the Militia Establishment till reign of Geo. II. *ib.*
9. Declaration of the Prerogative of the Crown .. .. .. .. 34
10. Militia of each county placed under Lords-Lieutenant. Cavalry and infantry. Numbers indefinite .. .. .. .. .. *ib.*
11. Pay fixed by statute .. .. .. *ib.*
„ Expense of it how borne .. .. 35
12. Arms, what and how provided .. *ib.*
13. Trophy Money .. .. .. .. *ib.*
14. Its offences punished by the Civil Magistrate .. .. .. *ib.*
15. Trained Bands (except those of London) to be discontinued .. *ib.*
16. Lord-Lieutenant thus constituted a Military Officer of the highest local rank .. .. .. 36
17. Militia so constituted enjoyed public confidence .. .. .. *ib.*
18. Militia trusted and Standing Army *mis*trusted by Parliament .. .. .. .. .. .. *ib.*
19. Development of this feeling throughout the reigns of Charles II. and James II. .. 37
20. Militia at the Revolution not reorganised .. .. .. .. *ib.*
21. Proposal to remodel Militia, 1752 .. .. .. .. .. .. 38
22. Commons sanction an Establishment of 62,000 Militiamen, 1756 .. .. .. .. .. .. *ib.*
23. Proposal rejected by the Lords—and reasons for their rejection *ib.*
24. Militia remodelled, 1757-1763 .. 39
25. An Establishment of 32,100 raised by Ballot sanctioned by Parliament .. .. .. .. *ib.*
26. Opposition in the counties to the Ballot .. .. .. .. .. *ib.*
27. Address to the Throne to complete Militia .. .. .. .. *ib.*
28. Plan on which the Militia was reconstituted .. .. .. .. 40
29. Direct authority of the Crown increased .. .. .. .. .. *ib.*


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Par. Page

30. Property qualification for officers imposed .. .. .. .. .. 40
31. Men to be Infantry soldiers only —how raised. Duties and qualifications .. .. .. .. *ib.*
32. Pay .. .. .. .. .. .. 41
33. Clothes and Arms .. .. .. *ib.*
34. Men to be liable to the Mutiny Act when on duty .. .. .. *ib.*
35. Civil Magistrate to punish for non-attendance .. .. .. .. *ib.*
36. Enlishment and enrolment .. 42
37. Power of Crown to *embody* the Militia for actual service and place it under General Officers *ib.*
38. Relative rank of officers in Militia and Regular Army fixed .. .. .. .. .. .. *ib.*
39. Proposal to establish a Militia in Scotland, 1760 .. .. .. *ib.*
40. Annual Pay and Clothing Act necessary. Militia Estimates annually framed by Commons' Committee. Practice altered and Estimate prepared by Secretary of State, 1862 .. .. *ib.*
41. Plan an experiment, but approved by Parliament in 1786 *ib.*
42. Increase of Militia since 1786 .. 44
43. Ireland: Militia Establishment, 1715. Law consolidated by Irish Parliament, 1793. Same by Parliament of the United Kingdom, 1809 .. .. .. 44
44. Scotland: Militia established, 1797. Law consolidated, 1802 45
45. Statutes at present in force. The Militia of the Three Kingdoms can be used interchangeably .. .. .. .. *ib.*
46. Power of the Crown to embody Militia discussed in Parliament. Enlarged, 1776. Proposal to limit, 1852 .. .. .. .. 46
47. Extended to any time of war, 1854 .. .. .. .. .. *ib.*
48. Ballot. Cost of it .. .. .. 47
49. ,, Act, suspended .. .. *ib.*
50. ,, law, amended, 1860 .. *ib.*
51. Expense of Militia borne by the Treasury, except for storehouses .. .. .. .. *ib.*
52. Periods since 1757 during which the Militia has been embodied 48
53. Value of the Militia Force. Landing of Pretender in Scotland in 1745. Of the French in England in 1797 .. .. .. *ib.*
54. Power of Crown to retain the Militia in embodiment .. .. 49
55. Militia enlisting in the Army .. *ib.*
56. ,, in war permitted to serve abroad .. .. .. .. .. 50
57. Militia Reserve Act, 1867 .. .. *ib.*


## CHAPTER IV.

THE ARMY (THE GUARDS AND GARRISONS) BEFORE THE REVOLUTION OF 1688.


1. Parliament of Charles II. and James II. resolved against a Standing Army .. .. .. 52
2. Army disbanded .. .. .. *ib.*
3. Except "Guards and Garrisons" 53
4. Numbers unlimited .. .. .. *ib.*
5. Police duties of the Guards .. 54
6. In suppressing conventicles .. *ib.*
7. Various other duties .. .. .. *ib.*
8. Claim exemption from Civil tribunals .. .. .. . .. *ib.*
9. Army retained to constrain the people to obedience .. .. .. 55
10. As to the recovery of debts due from the Army .. .. .. *ib.*
11. Punishment of soldiers under Articles of War illegal .. .. *ib.*
12. A Mutiny Act essential to annul the provisions of Great Charter of King John .. .. .. .. 56
13. Martial law declared illegal .. *ib.*
14. The remedy, trial by special commission of Oyer and Terminer .. .. .. .. .. .. 57
15. Billeting and free quarters .. 57
16. In private houses. Article as to quarters .. .. .. .. *ib.*
17. Inhabitants oblige officers to pay for quarters .. .. .. 58
18. Local Authorities required to provide Guard-houses, &c. .. *ib.*
19. Standing Army throughout Charles II.'s reign a cause of contention. Appropriation of supply to the two specific objects, 1666 .. .. .. .. .. *ib.*
20. Commissioners appointed to take account of Public moneys. Commons propose a Committee of both Houses. Act of Parliament necessary .. .. .. 59
21. Commissioners appointed by the House of Commons. Bill lost by Lords' delay .. .. .. *ib.*
22. Commons press on and pass another Bill .. .. .. .. *ib.*
23. Address that Army may be disbanded at the Peace .. .. 60


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| Par. | | Page |
|---|---|---|
| 24. | Impeachment of Lord Clarendon | 60 |
| 25. | Troops raised for the Dutch war, 1672 | *ib.* |
| „ | Commons remonstrate | 61 |
| 26. | Billets and Martial Law. Standing Army voted a grievance | *ib.* |
| 27. | Resolution in favour of the Militia and against a Standing Army, 1673. King promises to reduce it | 62 |
| 28. | Commons inquire into the marching of the Scotch Army into England | *ib.* |
| 29. | Also on the right of the King to send English troops abroad | *ib.* |
| 30. | Subsidy Act for thirty ships, 29 Car. II., c. 1 | 63 |
| 31. | War with France, 1677 | *ib.* |
| 32. | The first Estimate since the Restoration | *ib.* |
| 33. | Subsidy Act with clauses of appropriation | 64 |
| 34. | Second address on the subject of declaring war. Commons resolve to disband the Army | *ib.* |
| 35. | Estimate of cost, and Act passed for disbanding | *ib.* |
| 36. | Spirit actuating the Commons | 65 |
| 37. | Army is *not* disbanded. Both Houses agree to hold the Militia in readiness | *ib.* |
| 38. | King asks delay—but the Commons proceed with their second Bill to disband, 31 Car. II., c. 1 | *ib.* |
| 39. | A clause in this Act against future billeting of the Army | 66 |
| 40. | Commons impeach Mr. Seymour for misappropriation under 29 Car. II. | *ib.* |
| 41. | The Lord Treasurer (Danby) impeached under the 30 Car. II., c. 1 | 67 |
| 42. | Parliament controls the appointment of Officers and the command of the Army | *ib.* |
| 43. | Commands to be given to men of high social station | 68 |
| 44. | Political danger in the employment of needy men as officers | *ib.* |
| 45. | Roman Catholics by the Test Act prohibited from commands | 69 |
| 46. | Observance of the Test Act carefully watched. Secretary of State committed to the Tower | *ib.* |
| 47. | No allowance of half-pay granted by Parliament | *ib.* |
| „ | But granted by the King | 70 |
| 48. | The Purchase System established | *ib.* |
| 49. | Chelsea Hospital as provision for worn-out soldiers | *ib.* |
| 50. | Old Administrative Departments, viz., Treasury, Secretary of State | 71 |
| 51. | Secretary at War's office created | *ib.* |
| 52. | Nature of Secretary at War's office. Warrant separating his duties from those of General in Command | 72 |
| 53. | Purely civil duties | *ib.* |
| 54. | Paymaster-General of the Forces | 73 |
| 55. | Sign Manual orders absolute discharge of the Paymaster General | *ib.* |
| 56. | Audit of Paymaster-General's accounts by Auditors of Imprest. Payments "with" or "without" account | *ib.* |
| 57. | Army Agency | 74 |
| 58. | Antiquity of the System | *ib.* |
| 59. | Ordnance Department reorganized as a Civil Department | *ib.* |
| 60. | Navy formerly more associated with the Ordnance than the Army. The "Army" has absorbed the Navy element | 75 |
| 61. | The Marine Service | *ib.* |
| 62. | Ordnance and Navy only could impress carriages | *ib.* |
| 63. | Government and Discipline under the Prerogative | 76 |
| 64. | Courts-martial | *ib.* |
| 65. | Commissioners to execute Martial Law | 77 |
| 66. | The Crown and Parliament at issue as to the Tribunal for the punishment of Soldiers | *ib.* |
| 67. | Judge Advocate General | *ib.* |
| 68. | During James II.'s reign Department unaltered | 78 |
| 69. | Establishment of "Guards and Garrisons" | *ib.* |
| 70. | Monmouth's Rebellion. Articles of War, and trials by Courts-martial | 79 |
| 71. | Continuous sittings of the Court | *ib.* |
| 72. | Secretary at War's circular to Officers in Parliament to attend there | *ib.* |
| 73. | James II. desires to abolish the Militia and Test Acts | *ib.* |
| 74. | Resolution of the Commons to stand by the Militia and Test Acts | 80 |
| 75. | Irish Roman Catholics introduced into the English army | *ib.* |
| 76. | Illegal billeting practised by James II. | *ib.* |
| „ | At Portsmouth | 81 |
| 77. | At Hull | *ib.* |
| 78. | King governed by Standing Army, and so lost his throne | *ib.* |


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## THE STANDING ARMY AFTER THE REVOLUTION.

### CHAPTER V.

THE BILL OF RIGHTS AND ACT OF SETTLEMENT.


Par. Page

1. Peers of the Realm expel Roman Catholics and Irish from the Army .. .. .. .. .. .. 83
2. Irish sent to the Isle of Wight and thence home .. .. .. *ib.*
3. Remainder of the Army reformed by Prince of Orange .. .. *ib.*
4. Constitutional basis on which the Standing Army was placed in relation to the Crown and to Parliament .. .. .. .. 84
5. Plan of effecting the same by increasing the functions of Parliament .. .. .. .. .. .. *ib.*
6. Other guarantees against the encroachments of the Crown and Standing Army .. .. .. *ib.*
7. Conditions under the Bill of Rights and Act of Settlement upon which the Throne is held 85
8. 1st Condition. Parliament to assent to the numbers of the Standing Army. Tender of the Crown on "Conditions" .. .. *ib.*
9. An annual compact between the Crown and Parliament as to the number of the Standing Army 86
10. The preamble of the Mutiny Act the evidence of this compact .. *ib.*
11. No obligation on the Crown to keep up all the number voted *ib.*
12. No augmentation without the previous sanction of Parliament 87
13. Augmentation during the Election of a New Parliament, 1734 *ib.*
14. Constitutional objections to the measures of 1734 .. .. .. 88
15. Answered by Lord Hardwicke .. *ib.*
16. Commons jealous of the power of the Crown to raise Forces .. *ib.*
17. The same principle applicable to Volunteer Forces .. .. .. 89
18. First disputed, but ultimately conceded by the Ministers .. *ib.*
19. Number of the Volunteer Forces unlimited by Parliament .. *ib.*
20. No Foreign troops to be employed without the sanction of Parliament .. .. .. .. .. .. *ib.*
21. Landing of the Hessians in the Isle of Wight, 1794 .. .. .. 90
22. By Act of Succession Foreigners excluded from any command in the Army .. .. .. .. .. *ib.*
23. Confirmed and enforced by 1 Geo. I., c. 5 .. .. .. .. 91
24. The Foreign kindred of the Sovereign rendered this provision needful .. .. .. .. .. *ib.*
25. Principle partially relaxed, 1756 *ib.*
26. Principle entirely abrogated, 1844, and any Command in the Army may be given to Foreigners .. 92
27. As to Foreign Soldiers .. .. *ib.*


### CHAPTER VI.

THE PAYMENT OF THE ARMY BY PARLIAMENT.


1. Settlement of the Revenue and grant of a Civil List. Specific sums for Guards and Garrisons to be paid thereout .. .. .. 93
2. Estimates for war in Ireland .. *ib.*
3. War against France. Estimate of the forces, 1690, with promise not to employ them in England 94
4. Distribution of troops stated, and separate Establishments voted *ib.*
5. English Establishment voted with certain alterations .. .. *ib.*
6. The result, a specific appropriation of supplies and a division between Civil and Public expenditure .. .. .. .. .. 95
7. Balance of power between the Crown and Parliament as to the Army. No Parliamentary grant can be made without the assent of the Crown .. .. .. .. *ib.*
8. This rule was enforced in 1834 96
9. The Army look to the King, and not to Parliament .. .. .. 97
10. The payment of the Army left entirely to the Crown .. .. *ib.*
11. No Action at Law can be brought for pay, &c. .. .. .. .. 98


Digitized by Google

| Par. | | Page |
|---|---|---|
| 12. | Commons warned against interference with the Ministers of the Crown in settling claims | 98 |
| 13. | The Crown cannot increase the pay of the Army without the assent of Parliament .. .. | 99 |
| 14, 15. | Debate thereon in the Commons, 1795 .. .. .. .. | *ib.* |
| 16. | No Troops to be in the pay of the Crown save such as have been provided for by Parliament .. | 100 |
| 17. | Volunteers paid by subscriptions raised without the assent of Parliament, 1778 .. .. .. | *ib.* |
| 18. | Legality thereof questioned in Parliament .. .. .. .. | *ib.* |
| „ | Crown has the power of defending the Realm; but the sanction of Parliament necessary | 101 |
| „ | That to be given by votes in supply .. .. .. .. .. | 102 |
| 19. | Circular to Lords-Lieutenant, 1794 .. .. .. .. .. .. | *ib.* *ib.* |
| 20. | English Troops in pay of France, 1816 .. .. .. .. | *ib.* |
| 21. | Payment of Troops by Crown out of French subsidy objected to .. .. .. .. .. .. | 103 |
| 22. | General question discussed by Sir James Mackintosh .. .. | *ib.* |
| „ | Constitutional checks upon the Standing Army .. .. .. | 104 |
| 23. | Payment of the Army with Parliament. The command of it with the Crown .. .. .. | 104 |
| 24. | Originally pay included various allowances .. .. .. .. | 105 |
| 25. | Pay of fictitious men voted, and the money appropriated by Royal Warrant .. .. .. | *ib.* |
| 26. | Pay issued in separate portions, as for subsistence and arrears .. .. .. .. .. | *ib.* |
| 27. | Small pay of the Officers .. | 106 |
| 28. | Pay of the soldier, and as to the amount .. .. .. .. .. | *ib.* |
| 29. | As to increase of soldier's pay | *ib.* |
| 30. | Mr. Windham refused to increase the pay .. .. .. | 107 |
| 31. | A new principle of increase proposed during the Crimean War .. .. .. .. .. .. | *ib.* |
| 32. | Clothing of the soldier. Old System (1692) .. .. .. | *ib.* |
| 33. | New system (1854) .. .. .. | 108 |
| 34. | Rights of the Soldier to pay and clothing to be scrupulously regarded .. .. .. | *ib.* |
| 35. | Stoppages therefore to be seldom resorted to as a punishment .. .. .. .. | *ib.* |
| 36. | Pay and half-pay administered by a Parliamentary Officer .. | 109 |
| 37. | Control of House of Commons over military expenditure of the Crown .. .. .. .. | *ib.* |


## CHAPTER VII.

### THE CONTROL AND AUDIT OF MILITARY EXPENDITURE BY PARLIAMENT.


| | | |
|---|---|---|
| 1. | Origin of Standing Army and National Debt contemporaneous | 110 |
| 2. | Two classes of military expenditure: (1.) Ordinaries on Estimate; (2.) Extraordinaries without Estimate .. .. .. | *ib.* |
| 3. | "Ordinary" expenditure, and the method of disbursing it .. | *ib.* |
| 4. | "Extraordinaries" .. .. .. | 111 |
| 5. | The method of disbursing it .. | *ib.* |
| 6. | Extraordinaries lead to great abuses .. .. .. .. .. | *ib.* |
| 7. | Control and audit by Parliament of military expenditure | 112 |
| 8. | Competency of Parliament to deal with the subject .. .. | *ib.* |
| 9. | Commons assert their right against the Lords to appoint auditors .. .. .. .. .. | *ib.* |
| 10. | Conference between the Houses on this question .. .. .. | *ib.* |
| | An audit the sequel to an appropriation of supplies .. .. | 113 |
| 11. | Audit Acts of Wm. III.'s reign produced no practical result | 113 |
| 12. | Audit Acts revived, and Queen Anne heartily approved thereof | 114 |
| 13. | The accounts of the Paymaster-General of the Forces—first examination .. .. .. .. | *ib.* |
| „ | Audit by Auditors of Imprest no bar to the inquiries of the Parliamentary Commissioners | *ib.* |
| 14. | Misappropriation by order of William III. .. .. .. .. | 115 |
| 15. | Particular sums that were misappropriated .. .. .. .. | *ib.* |
| 16. | Parliamentary responsibilities of the Paymaster-General submitted to the Commons .. .. | 116 |
| 17. | Decision of the House of Commons on the Paymaster's case | *ib.* |


Digitized by Google

| Par. | | Page |
|---|---|---|
| 18. | He was expelled the House as guilty of high crime and misdemeanor | 117 |
| 19. | Address to the Crown | *ib.* |
| 20. | Further irregularities in military expenditure, 1711. Resolutions of the Commons | 118 |
| 21. | Address to the Throne. Excess of expenditure — extraordinaries — declared illegal, and an invasion of the rights of Parliament | *ib.* |
| 22. | Excess of expenditure | 119 |
| „ | Another Audit Act passed | *ib.* |
| 23. | Independence of the Audit Commissioners. The General's perquisites of 63,410*l.* 3*s.* 7*d.* | 120 |
| 24. | His allowance under Order of William III. of 15,174*l.* per annum for contingencies, "without account" | *ib.* |
| 25. | Refusal to account for these sums as public moneys | 121 |
| 26. | Report submitted to the House of Commons. Decisions of the House | *ib.* |
| 27. | Other abuses in military expenditure | *ib.* |
| 28. | Abuses in pay of the army. General's orders for payment irregular | 122 |
| 29. | Extraordinaries, but not the number of men, under the direction of the General | *ib.* |
| 30. | Abuse in payment of regiments | *ib.* |
| 31. | Causes of it. General orders regiments incomplete to muster as complete | 123 |
| 32. | Alleged reason for so doing | *ib.* |
| 33. | Great increase of expense thereby | *ib.* |
| 34. | As to foreign troops—Greater irregularities | *ib.* |
| 35. | Increase of National Debt | 124 |
| 36. | Apathy of the House of Commons in reigns of George I. and II. | 124 |
| 37. | Unlimited vote of credit to the Crown, 1727 | 125 |
| 38. | Protest of the Lords. Grant of absolute power inconsistent with a free Government | *ib.* |
| 39. | Another unlimited Vote of Credit to the Crown in George II.'s reign | 126 |
| 40. | In 1739, all other Votes of Credit limited | *ib.* |
| 41. | In 1757 | *ib.* |
| 42. | Debates on matters of financial control. Other measures adopted by the Commons to control expense, 1739-43 | 127 |
| 43. | Army extraordinaries, 1743 | 127 |
| 44. | Select Committee on army expenditure, 1745 | 128 |
| 45. | Increase of military expenditure in Geo. III.'s reign | *ib.* |
| 46. | Policy of colonial defence | *ib.* |
| „ | Military Colonial expenditure beyond the control of Parliament | 129 |
| 47. | No Local control by civil departments | *ib.* |
| 48. | Both systems are still in operation and in contrast | *ib.* |
| 49. | Increase in the Extraordinaries | 130 |
| 50. | Abuses in military expenditure | *ib.* |
| 51. | Duty of the Commons. Expenditure in the American war | 131 |
| 52. | Select Committee of the Commons on Extraordinaries, 1778. Refusal to print same for use of Members | 132 |
| 53, 54. | Lord Shelburne's two motions in the House of Lords | *ib.* |
| 55. | Mr. Burke's plan for economic reform, 1780 | 133 |
| 56. | Mr. Dunning's resolutions against the influence of the Crown | *ib.* |
| 57. | Audit Act a violation of the rights of the Commons | *ib.* |
| 58. | Two of the proposed Commissioners were in the pay of the Crown | 134 |
| 59. | Extraordinaries referred to the Commissioners | *ib.* |
| 60. | Pay of the army applied to various objects for which it had not been voted | *ib.* |
| 61. | Altered by Mr. Burke's Act. Secretary at War's duty as to ordinary expenditure | 135 |
| 62. | Commissioners' Report on Extraordinaries | *ib.* |
| 63. | Abuses in the expenditure made through military officers | 136 |
| 64. | Conflict between pecuniary interest and public duty | *ib.* |
| 65. | Remedy how to be sought for | 137 |
| 66. | Found in intrusting financial duties to civil servants | *ib.* |
| 67. | Value and effect of these recommendations | 138 |
| 68. | Commissioners for the audit of public accounts established, 1785 | *ib.* |
| 69. | Commons had no control over Army Extraordinaries except through Departments | 139 |
| 70. | Army Extraordinaries voted on Estimate since 1836. Plan for the Expenditure, 1834 | *ib.* |


Digitized by Google

Par. Page
71. Plan of Estimates first proposed 140
72. Secretary at War to decide on all doubtful cases of expenditure by the General officer .. .. .. .. .. *ib.*
73. Monthly inspection of accounts at Audit Office .. .. .. 140
74. Plan ultimately adopted .. .. *ib.*
75. Whether equal security now exists, doubtful? .. .. .. 141

## CHAPTER VIII.

### THE MUTINY ACT.

1. The necessity for the Mutiny Act admitted .. .. .. .. 142
2. Circumstances that were the immediate cause of it .. .. *ib.*
3. Provisions of the Mutiny Act, 1 Wm. & Mary, c. 5 .. .. 143
4. Limitation on the Prerogative of the Crown as to Martial Law *ib.*
5. Preamble of the Mutiny Act, and amendment thereof by 1 Anne, c. 20 .. .. .. .. *ib.*
6. Enactments of the Act .. .. *ib.*
7. Parliament has not ceded its power over the Army to the Crown exclusively .. .. .. 144
8. Military not a separate caste—but entitled to Civil Rights as Citizens .. .. .. .. .. *ib.*
9. The duty of Parliament to guard these Civil Rights for the Soldier .. .. .. .. 145
10. Controversy between the Crown and Parliament on questions arising on the Mutiny Act and Articles of War .. .. .. *ib.*
11. Articles of War before and after the Mutiny Act .. .. .. 146
12. Power to make Articles of War conferred on the Crown .. *ib.*
13. Debate on Articles of War, 1718 147
14. Objection that Parliament had conferred a sole legislative power on the Crown .. .. *ib.*
15. Two remedies: — 1. Incorporating Articles in the Mutiny Act. 2. Limiting the Punishment by the Mutiny Act .. *ib.*
16. Lord Hardwicke's report on the last question, 1728 .. .. .. 148
17. Mutiny Act amended accordingly .. .. .. .. .. *ib.*
18. General questions on the Articles of War .. .. .. .. 149
19. They are applicable to all persons liable to the Mutiny Act *ib.*
20. They are not applicable to other persons than those liable to the Mutiny Act .. .. .. *ib.*
21. Articles must strictly follow the Mutiny Act .. .. .. .. 149
22. Articles not warranted by the Act *ultra vires* .. .. .. 150
23. Restraint upon civil proceedings imposed by Articles of War .. *ib.*
24. Court-martial system established with Parliamentary sanction with few restrictions 151
25. Opposition to the Mutiny Act, as sanctioning military tribunals .. .. .. .. .. .. *ib.*
26. These objections have increased weight, when Civil Administrative officers, having the charge of the public treasure, are made liable to the Mutiny Act .. .. .. .. .. .. 152
27. An open question in the reigns of William III. and Anne, whether the Mutiny Act should be continued .. .. *ib.*
28. The action of Parliament in regard to the Mutiny Act .. 153
29. Lessening the amount of punishment, 1713 .. .. .. .. *ib.*
30. Capital and corporal punishment, 1715 .. .. .. .. *ib.*
31. Power to inflict punishment by Articles of War illegal .. .. 154
32. Death for desertion .. .. .. *ib.*
33. Proposal to confer power on the Crown to substitute corporal for capital punishment, 1728 *ib.*
34. Corporal punishment mitigated and abolished .. .. .. .. 155
35. Definition of crimes and offences. Disobedience to any orders .. *ib.*
36. Lords' Protest .. .. .. .. 156
37. Disobedience to a lawful order, 1718 .. .. .. .. .. *ib.*
38. Opinion of the Duke of Argyle *ib.*
39. The words "legal order" suggested, 1733 .. .. .. .. *ib.*
40. Altered in 1749 as they stand in Mutiny Act, 1868 .. .. 157
41. Implicit obedience from subordinate officers, the Rule of Law *ib.*
42. Application of this rule to Administrative or Financial Officers .. .. .. .. .. .. *ib.*
43. A class tribunal necessary for

Digitized by Google

Par. Page

Ordnance and Administrative Officers .. .. .. .. .. 158
44. What are offences triable by Court-martial .. .. .. .. *ib.*
45. Early Mutiny Act disregarded the rule that military offences only are triable by Court-martial *ib.*
46. Lords' Protest. Obedience to Civil Magistrate to be secured. Jurisdiction of Courts-martial over Civil offences objectionable 159
47. Mutiny Acts amended .. .. *ib.*
48. Punishment by civil and by military courts .. .. .. 160
49. As to political offences .. .. *ib.*
50. What are such, after general orders relating thereto .. .. *ib.*
51. Opinion of Sir Robert Peel as to interdiction from political action .. .. .. .. .. 161
52. Order to prohibit attendance at Orange or other political societies .. .. .. .. .. .. *ib.*
53. Disobeyed by late Duke of Cumberland, but upheld by Parliament .. .. .. .. *ib.*
54. Benefit societies in the army suppressed .. .. .. .. 162
55. Censure of orders of a superior by a junior officer, how far punishable .. .. .. .. *ib.*
56. Objections to mode of trial by Court-martial .. .. .. .. *ib.*
57. Lords' debate in 1749. Privileges of every free man to trial by jury .. .. .. .. .. *ib.*
58. Denial of these rights to soldiers 163
59. Importance of a fair trial to the accused .. .. .. .. .. *ib.*
60. The result of the trial wholly under the control of the General *ib.*
61. A Court-martial is always in favour of authority, and the lawfulness of the General's orders .. .. .. .. .. 164
62. Evils of revision, and uncertainty of the sentence .. .. *ib.*
63. Danger of separating the Military from the Civil power. Revision of a Court-martial sentence dangerous .. .. 165
„ Destroys the independence of the Court .. .. .. .. .. 166
64. Main features of these tribunals remain .. .. .. .. .. *ib.*
65. Tribunals in aid of the prerogative of the Crown in the Government, and not in the Administration of the army *ib.*
66. Observations upon the principal points of controversy .. 167

Par. Page

67. Free panel instead of selection of officers for court-martial duty by the convening authority .. .. .. .. .. .. 167
68. As to revision, and the limitation to one revision .. .. *ib.*
69. Crown not bound by decision of a Court-martial as to the expediency of continuing any officer in Commission .. .. *ib.*
70. Oath of Secresy .. .. .. 168
71. Court-martial is one of competent jurisdiction .. .. .. *ib.*
72. "Open" or "Close" arrest of the offenders in the discretion of the commanding officer .. 169
73 "Close" arrest a legal custody *ib.*
74. Civil arrest from military custody in 1778 .. .. .. .. *ib.*
75. Question raised in 1807 .. .. 170
76. Opinion of Law Officers .. .. *ib.*
77. Reasons for "open" or "close" arrest .. .. .. .. .. 171
78. What is the limit to the duration of this arrest .. .. .. *ib.*
79. Original article in 1742 .. .. *ib.*
80. Common law courts have refused to interfere .. .. .. 172
81. Articles altered in terms in 1866 *ib.*
82. Protection from oppression that is secured to the prisoner .. *ib.*
83. For trial on a false accusation the prisoner has no legal remedy against his superior officer .. .. .. .. .. *ib.*
84. Condonation of Military offences 173
85. Statute of Limitations for Military Offences .. .. .. .. *ib.*
86. Method of procedure by Court-martial .. .. .. .. .. 174
87. Custom of war, how far applicable to store and commissariat officers .. .. .. .. .. *ib.*
88. Miscarriage of justice—appeal to the Crown .. .. .. .. *ib.*
89. Not to Parliament .. .. .. 175
90. Grounds on which Parliament should ever interfere .. .. *ib.*
91. Lord Brougham's views .. .. 176
92. If a Court-martial acts without jurisdiction, all the members thereof legally liable to the accused .. .. .. .. .. *ib.*
93. Sentence of a Court-martial works no forfeiture at common law .. .. .. .. .. .. *ib.*
94. Privilege of Parliament does not exempt from trial by Court-martial .. .. .. .. .. *ib.*
95. No officer has any right to demand a Court-martial .. .. 177


Digitized by Google

| Par. | | Page |
|---|---|---|
| 96. | Extension of the Mutiny Act opposed in Parliament .. | 177 |
| 97. | Evil growth of the Mutiny Act from 1689 to 1749 .. .. | *ib.* |
| 98. | In reigns of William III. and Anne .. .. .. .. .. | 178 |
| 99. | Half-pay officers held liable | *ib.* |
| 100. | The half-pay officers taken at Preston tried and executed | 179 |
| 101. | Doubtful legality .. .. .. | *ib.* |
| 102. | Mutiny Act amended, 1747 .. | *ib.* |
| 103. | Amendments withdrawn, 1749 | *ib.* |
| 104. | General Ross's case, 1785. Twelve Judges' decision that half-pay officer not liable .. | 180 |
| 105. | Cabinet refuse to amend the Mutiny Act, by applying it to half-pay officers .. .. | *ib.* |
| 106. | As to Brevet officers .. .. | *ib.* |
| 107. | Extended to troops in India and in America, 1754 .. .. | 181 |
| 108. | Militia made liable to the Mutiny Act .. .. .. .. | *ib.* |
| 109. | Sappers and Miners, 1788 .. | *ib.* |
| 110. | Commissariat and Store officers triable for embezzlement, 1809 | *ib.* |
| 111. | Liability to Mutiny Act inconsistent with financial duties. Extended to them for all purposes, 1818 .. .. .. .. | 182 |
| 112. | Mr. Fox's prediction verified, 1818 .. .. .. .. .. | 183 |
| 113. | Whether an officer is liable to the Mutiny Act, "on leave" | *ib.* |
| 114. | Or after dismissal .. .. .. | *ib.* |
| 115. | Guernsey Mutiny, 1783 .. | 184 |
| 116. | Liability after Disbandment | *ib.* |
| 117. | The Second Mutiny .. .. | 185 |
| 118. | As to Discharges extorted by violence .. .. .. .. .. | *ib.* |
| 119. | The law of these cases doubted | *ib.* |
| 120. | As to the Militia practice .. | 186 |
| 121. | Colonel of Militia not liable to Court-martial after Disembodiment .. . .. . | *ib.* |
| 122. | As to Militia Statutes .. .. | *ib.* |
| 123. | Limited Enlistment Act, 1847 | *ib.* |
| 124. | As to the countries to which the Mutiny Act extends.—Ireland .. .. .. .. .. | 187 |
| 125. | Army in the East Indies .. | *ib.* |
| 126. | Jurisdiction of Court-martial, how far local .. .. .. .. | *ib.* |
| 127. | Jurisdiction for trial of alien spies .. .. .. .. .. | 188 |
| 128. | No jurisdiction over foreign troops in English pay .. | *ib.* |
| 129. | As to Courts of Inquiry .. .. | *ib.* |
| 130. | Only Military or Departmental witnesses can be compelled to attend. Public policy requires that the proceedings should be confidential .. .. | 189 |
| 131. | This view supported by the Courts of Law .. .. .. | *ib.* |
| 132. | And by Parliament .. .. | *ib.* |
| 133. | Mutiny Bill a subject of party warfare .. .. .. .. .. | 190 |
| 134. | No new provisions giving rise to debate should be inserted | *ib.* |


## CHAPTER IX.

### THE ARMY IN RELATION TO THE REPRESENTATIVE AND JUDICIAL INSTITUTIONS OF GREAT BRITAIN.


| | | |
|---|---|---|
| 1. | Influence of the Army on Elections prior to the Revolution | 191 |
| 2. | Policy of William III. to reign by the free choice of the people. Acts of the Parliament of William III. .. .. .. .. | *ib.* |
| 3. | Objects of this Chapter .. .. | *ib.* |
| 4. | Army in relation to the House of Commons .. .. .. .. | 192 |
| 5. | No leave of absence needed to attend Parliament .. .. | *ib.* |
| 6. | Independence heretofore shown by members of Parliament who were in the Army .. .. .. | *ib.* |
| 7. | Acceptance of first commission does: but of second, does not: vacate seat in Parliament .. | 193 |
| 8. | Commander-in-Chief can order an officer to hold a civil appointment—and his seat is not vacated .. .. .. .. .. | *ib.* |
| 9. | Independence of military men in Parliament .. .. .. | *ib.* |
| 10. | No officer to be punished for speech in Parliament except on Address .. .. .. .. | 193 |
| 11. | Military power in the House not inconsiderable .. .. .. .. | 194 |
| 12. | Votes of soldiers influenced by George III., 1774 .. .. .. | *ib.* |
| 13. | Origin of exclusion of soldiers (not being members) from the House of Commons? .. .. | *ib.* |
| 14. | Soldiers excluded from election towns during the time of election. No leave of absence for attendance to vote, or on Parliamentary summons .. .. | 195 |


Digitized by Google

Par. Page

15. Origin of the rule excluding soldiers from places of election 195
16. Rule confirmed, 1735, by 8 Geo. II., c. 30 .. .. .. .. .. 196
17. Reasons for the measure .. .. *ib.*
18. Constitutional rule laid down by Preamble .. .. .. .. 197
19. Provisions of the Statute .. *ib.*
20. Rule strictly insisted on by Parliament, and observed by Secretary-at-War .. .. .. *ib.*
21. Action of Parliament in Westminster Election case, 1741 .. *ib.*
22. Punishment of Magistrates and High Bailiff .. .. .. .. 198
23. Speaker's Reprimand .. .. *ib.*
24. Special Act for Troops to remain at two Election Towns, 1780 199
25. Statement of the absolute necessity for the presence of the Troops. Restrictions imposed by the Statute .. .. .. *ib.*
26. Observations of Lord Palmerston on the Act, 1811. Secretary at War an independent Parliamentary Minister .. .. 200
27. Proved by the 8th Geo. II., c. 307 .. .. .. .. .. .. 200
28. Disobedience to that Act could not be excused by any obedience to an order from the Commander-in-Chief .. .. 201
29. Secretary at War to protect the public from increase of military expenditure .. .. .. *ib.*
30. Repeal of 8 Geo. II., c. 30, 1847 *ib.*
31. Provisions of 10 Vic., c. 21 .. 202
32. Extends to Volunteers .. .. *ib.*
33. Observance of the Statute by Secretary at War, 1747 .. .. *ib.*
34. Troops removed to Clifton, during election at Bristol, in 1812 203
35. Soldiers excluded from towns during the Assizes .. .. .. *ib.*
36. Only security for this rule was the action of a responsible Minister .. .. .. .. .. *ib.*
37. Soldiers confined to barracks, 1798 .. .. .. .. .. .. 204
38. Abandoned in the year 1855 .. *ib.*
39. In Ireland contrary rules prevail .. .. .. .. .. .. 205


## CHAPTER X.

AS TO THE EXEMPTION OF THE ARMY FROM THE ORDINARY RULES OF LAW.


1. One of the principles of first Mutiny Act, that no person should be thereby exempt from the ordinary process of the law. Duty of Parliament to maintain that principle .. .. .. 206
2. The ordinary courts of the civil judicature are supreme .. .. *ib.*
3. Jurisdiction in Homicide Act of 1862 .. .. .. .. .. .. 207
4. Object of the Act, and cases under it .. .. .. .. .. *ib.*
5. As to exemption from civil process. Grant of Protection,—1. To Debtors. 2. To Soldiers .. .. .. .. .. *ib.*
6. Disuse of these grants .. .. 208
7. Object of Parliament to secure the payment of the soldier's debt to the civil community .. *ib.*
8. Parliamentary sanction to exemption from debt given in a temporary Act .. .. .. *ib*
9. These granted by the 1st Mutiny Act of George I.'s reign. Lords' Protest .. .. .. .. 209
10. Limited to debts of 10*l.* .. .. 210
11. Opposed, and Lords' Protest .. *ib.*
12. Exemption raised to 30*l.*, and otherwise extended .. .. 211
13. Exemption should be jealously guarded against .. .. .. *ib.*
14. Charges thrown on the Poor Rates .. .. .. .. .. *ib.*
15. Other exemptions, of three classes .. .. .. .. .. *ib.*
16. Soldier in active military service may make nuncupative will 212
17. Actual military service—what? *ib.*
18. As to the effects of a deceased officer or soldier .. .. .. 213
19. The personal effects of officers and soldiers. Committee of Adjustment .. .. .. .. *ib.*
20. Crown not responsible for the Committee's Acts. The Committee have an absolute title to effects in camp, &c. .. .. *ib.*
21. Functions of the Secretary of State under the Act .. .. *ib.*
22. Exemption from probate duty 214
23. Tolls exemption under statutes *ib.*
24. Assessed Taxes .. .. .. .. *ib.*
25. Postage of letters, &c. .. .. 215
26. Local Rates .. .. .. .. *ib.*
27. From Offices .. .. .. .. *ib.*




Digitized by Google

## CHAPTER XI.

ON THE MOVEMENT AND QUARTERING OF TROOPS.


| Par. | | Page |
|---|---|---|
| 1. | The operation of Mutiny Act extended by clauses relating to improvement of carriages and quartering of troops .. | 217 |
| 2. | These powers granted by Parliament with caution, to the civil power in aid of the military | *ib.* |
| 3. | No power of impressment for the Army till 4 William and Mary, c. 13 .. .. .. .. | *ib.* |
| 4. | Power withheld intentionally, to prevent the troops being used against the people. Proposal to localise troops .. .. .. | 218 |
| 5. | Terms in which the power is conceded .. .. .. .. .. | *ib.* |
| 6. | Its execution in the hands of a civil minister .. .. .. .. | *ib.* |
| 7. | Practice altered .. .. .. | 219 |
| 8. | Any oppression in these powers, the appeal is to the civil ministers .. .. .. .. .. .. | *ib.* |
| 9. | As to railway carriage .. .. | *ib.* |
| 10. | Railway Carriage Acts, 1842 and 1844. Construction of Acts —(1) as to officers and soldiers | 220 |
| 11. | (2) as to stores .. .. .. .. | *ib.* |
| 12. | Questions on the Acts .. .. | *ib.* |
| 13. | Report of Railway Commissioners, 1866 .. .. .. .. | 221 |
| 14. | Erection of barracks opposed .. | *ib.* |
| 15. | Barrack accommodation in 1697. Misery of the troops, 1707 .. | *ib.* |
| 16. | Barracks built with small accommodation and at little cost, 1716. Barrack Estimate, 1717 | 222 |
| 17. | Letter of Board of Ordnance .. | *ib.* |
| 18. | Not the general parsimony of Parliament, but unpopularity of the Army .. .. .. .. | *ib.* |
| 19. | Misery of Encampment to the Troops .. .. .. .. .. | 223 |
| 20. | The people's Aversion to Barracks, 1739-40 .. .. .. .. | *ib.* |
| 21. | Blackstone's Opinion, 1766 .. | *ib.* |
| 22. | Mr. Pitt's fortification scheme rejected on the same grounds, 1786 | 224 |
| 23. | Barrack Establishment in Ireland, 1697-1800. Statutes of Irish Parliament, 1697 .. .. | 225 |
| 24. | Charter for barrack trustees, 1700 | *ib.* |
| 25. | Dublin Barracks, 1703 .. .. | 226 |
| 26. | Grant of compulsory powers for purchase of barrack and hospital sites to Barrack Commissioners, 1717 .. .. .. .. | *ib.* |
| 27. | Extended to battery sites, 1745 | 226 |
| 28. | Powers made permanent, and estates of Barrack trustees vested in the Crown .. .. | *ib.* |
| 29. | Powers extended, 1796 .. .. | 227 |
| 30. | Barrackmaster-General for Ireland, 1800 .. .. .. .. | *ib.* |
| 31. | Effect of Barrack Establishment in Ireland .. .. .. .. | *ib.* |
| 32. | In Scotland .. .. .. .. | *ib.* |
| 33. | Barracks in the Colonies. Provided by local Government .. | 228 |
| 34. | In America. Barrackmaster-General .. .. .. .. .. | *ib.* |
| 35. | All barracks under Ordnance Department .. .. .. .. | *ib.* |
| „ | Barrack regulations, 1737 .. | 229 |
| 36. | In 1761 .. .. .. .. .. | *ib.* |
| 37. | Great grievance of billeting. Proclamation of Prince of Orange .. .. .. .. .. | *ib.* |
| 38. | Power to billet granted by Second Mutiny Act for a limited period. Power to billet in public-houses. [To 20th December, 1690] .. .. .. .. | 230 |
| 39. | Billeting for one or more nights on march .. .. .. .. .. | *ib.* |
| 40. | Become perpetual .. .. .. | 231 |
| 41. | Limitation in 12 Anne as to place and time for permanent quarters .. .. .. .. .. | *ib.* |
| 42. | Powers construed strictly .. | 232 |
| 43. | Are in control of the civil authorities .. .. .. .. | *ib.* |
| 44. | Power absolutely unpopular .. | *ib.* |
| 45. | Billet involved subsistence of the soldier .. .. .. .. | *ib.* |
| 46. | Controversy and difficulties on the clauses .. .. .. .. | 233 |
| 47. | Justices assessed the cost of subsistence at a higher rate than Parliament allowed .. .. | *ib.* |
| 48. | Meeting of Members of both Houses .. .. .. .. .. | *ib.* |
| 49. | Statement of Secretary at War to the House of Commons .. | 234 |
| 50. | Importance of the debate .. | *ib.* |
| „ | Amendments carried .. .. | 235 |
| 51. | Billeting in America — differences with the mother country | *ib.* |
| 52. | British Parliament insists on quarters being provided .. | *ib.* |
| 53. | Necessaries to be provided .. | *ib.* |
| 54. | House of Representatives in New York refuse compliance | *ib* |


Digitized by Google

| Par. | | Page |
|---|---|---|
| 55. | 5 George III., c. 33, renewed. Functions of the New York Assembly suspended .. .. | 236 |
| 56. | Clauses of compromise inserted in Act of Renewal .. .. .. | *ib.* |
| 57. | Amendments of 1739-40 not satisfactory to publicans. Public-houses closed to avoid billets | 237 |
| 58. | Public service impeded, 1793 .. | *ib.* |
| 59. | Remedy in the establishment of a Barrack Department .. | *ib.* |
| 60. | Foreign troops cannot be billeted | 238 |
| 61. | As to quartering Guards out of Westminster, and other troops in Westminster .. .. .. | *ib.* |
| 62. | Officers' billets .. .. .. .. | 239 |
| 63. | Public not liable to damage. Property of person billeted not liable to distress .. .. | *ib.* |
| 64. | Half-billet system .. .. .. | *ib.* |
| 65. | Law as to billets in Scotland and Ireland .. .. .. .. | *ib.* |


## CHAPTER XII.

THE BARRACK ESTABLISHMENT.


| | | |
|---|---|---|
| 1. | Establishment of two military departments, 1792-3 .. .. | 240 |
| 2. | The Barrackmaster-General and Commander-in-Chief .. | *ib.* |
| 3. | Ordnance Department superseded | *ib.* |
| 4. | Large expenditure involved. Parliament not consulted .. | 241 |
| 5. | Course taken by Mr. Pitt's Ministry .. .. .. .. .. | *ib.* |
| 6. | Barracks built by the War Office out of Extraordinaries .. .. | 242 |
| 7. | Debate in House of Commons, 1793 .. .. .. .. .. .. | *ib.* |
| 8. | Mr. Pitt's explanation .. .. | *ib.* |
| 9. | Debate on General Smith's motion for inquiry, 1796 .. .. | 243 |
| 10. | Economy of the arrangements. Parliament unfairly used .. | *ib.* |
| 11. | Economy vouched by Mr. Pitt | 244 |
| 12. | History of Barrackmaster-General's establishment .. .. .. | *ib.* |
| 13. | Origin of the plan .. .. .. | 245 |
| 14. | Responsibility of Barrackmaster-General, to whom? .. .. | *ib.* |
| 15. | Business was in its nature civil, not military. Purchase of land. Building thereon .. | 246 |
| 16. | Barrack furniture to be purchased and repaired .. .. | *ib.* |
| 17. | Personal defalcations .. .. | *ib.* |
| 18. | Objects of the appointment .. | 247 |
| 19. | Better supplies and no frauds | *ib.* |
| 20. | Establishment in 1797 .. .. | *ib.* |
| 21. | All appointments and emoluments made by Barrackmaster-General .. .. .. .. .. | 248 |
| 22. | Report of Finance Committee, 1797 .. .. .. .. .. .. | *ib.* |
| 23. | Error in the principle of the establishment. Secretary at War substituted for the Treasury .. .. .. .. .. .. | *ib.* |
| 24. | Audit Commissioners ignored .. | 249 |
| 25. | Controversy with Secretary at War .. .. .. .. .. .. | *ib.* |
| 26. | No control over Barrackmaster-General .. .. .. .. .. | 249 |
| 27. | Reports of Committees on Military Inquiry, 1806 .. .. .. | *ib.* |
| 28. | Controversy with the Auditors of Public Affairs .. .. .. | 250 |
| 29. | Accountant urges the circumstances of his appointment .. | *ib.* |
| 30. | Results of the appointment .. | 251 |
| 31. | As to supplies .. .. .. .. | *ib.* |
| 32. | As to prevention of frauds .. | *ib.* |
| 33. | Departmental or contingent expenses .. .. .. .. .. | 252 |
| 34. | Establishment increased .. .. | *ib.* |
| 35. | Total amount unaccounted for, 10,000,000*l.* .. .. .. .. | *ib.* |
| 36. | Reasons for the appointment of Barrack Department. Official responsibility .. .. .. | 253 |
| 37. | Expenditure reckless and unauthorised .. .. .. .. | *ib.* |
| 38. | Board of Ordnance a constitutional safeguard .. .. .. | 254 |
| 39. | Recurrence and disasters .. .. | *ib.* |
| 40. | Remedy: establishment changed from military to civil .. .. | *ib.* |
| 41. | Acting under the Treasury .. | 255 |
| 42. | Cause of the evils stated .. .. | *ib.* |
| 43. | Remedy for them .. .. .. | 256 |
| 44. | Abolition of Barrackmaster-General's Department, and the appointment of Commissioners acting under the Treasury .. | *ib.* |
| 45. | Subsequent History .. .. .. | *ib.* |
| 46. | Statutes relating to Barrack Department .. .. .. .. | *ib.* |
| 47. | Statutory powers for barrack purposes in Great Britain .. | 257 |
| 48. | Temporary occupation only .. | *ib.* |
| 49. | Vested in Barrackmaster-General, 1805 .. .. .. .. .. | *ib.* |
| 50. | Transferred to Commissioners of Barracks, 1808 .. .. .. | 258 |
| 51. | Transferred to Comptroller, 1817 | *ib.* |
| 52. | In 1822 .. .. .. .. .. | *ib.* |




Digitized by Google

## CHAPTER XIII.

ON THE INCREASE IN NUMBERS OF THE STANDING ARMY.


| Par. | | Page |
|---|---|---|
| 1. | Erection of Barracks facilitated the increase of the Standing Army | 259 |
| 2. | Progress of the Standing Army from 1698 | *ib.* |
| 3. | Resolutions of the Commons on reductions, 1698 | *ib.* |
| 4. | Limitations imposed by Parliament | 260 |
| 5. | Augmentation and reduction in 1713. After the peace two estimates submitted—(1) for troops in the Plantations and abroad; (2) for Guards and Garrisons at home | *ib.* |
| 6. | Mutiny Act declared the number of troops to be employed in Great Britain. Separate Estimate for many years adopted, and the Forces voted for distinct Establishments | *ib.* |
| 7. | Foreigners in the military service facilitated the speedy reduction of the Army | 261 |
| 8. | Constitutional security derived from the mode of Parliamentary procedure in 1713. These Parliamentary proceedings afforded security against the Standing Army within the kingdom | *ib.* |
| 9. | Security abandoned. Power of Crown over Militia limited, over the Standing Army unlimited | *ib.* |
| 10. | The number of the Forces a constant source of controversy between the Crown and Parliament | 262 |
| 11. | Grounds of jealousy against the Army | 263 |
| 12. | Augmentation in George I.'s reign | *ib.* |
| 13. | The Augmentations in George II.'s reign. | *ib.* |
| ,, | Royal Marines | 264 |
| 14. | Raised by Order in Council in 1694, and disbanded in 1697 | *ib.* |
| 15. | Raised in 1702, and disbanded 1713 | *ib.* |
| 16. | Raised in 1739, and placed under the Admiralty | *ib.* |
| 17. | Raised on their present Establishment in 1755 | 265 |
| 18. | The Ordnance Corps raised. Royal Engineers | *ib.* |
| 19. | Part of military branch of Ordnance, 1717 | 266 |
| 20. | Reformed, 1759 | *ib.* |
| 21. | Commissioned as officers, 1757 | *ib.* |
| 22. | Men raised as privates, 1788 | *ib.* |
| 23. | Royal Artillery | *ib.* |
| 24. | Part of military branch of Ordnance. Two Companies raised, 1715 | 267 |
| 25. | Estimate for pay submitted to Parliament, 1743 | *ib.* |
| 26. | Commissioned as officers, 1751 | *ib.* |
| 27. | The army of the East India Company | 268 |
| 28 | Charter of William III., 1698 | *ib.* |
| 29. | As to native troops raised under this Charter | *ib.* |
| 30. | As to European troops of the Company | 269 |
| 31. | Raised under 39 George III. | *ib.* |
| 32. | Subsequent arrangements till the force was transferred to the Crown | *ib.* |
| 33. | As to troops of the Regular Army in India | 270 |
| 34. | Forts and troops in Africa, 1730 | *ib.* |
| 35. | Motion for reduction to 12,000 men, 1732 | 271 |
| 36. | Motion again renewed, 1738 | *ib.* |
| 37. | Augmentation opposed, 1740. Immediate reduction on peace, 1749 | 272 |
| 38. | Augmentation in 1755, and reduction in 1763 | *ib.* |
| 39. | Augmentation in 1779 | *ib.* |
| 40. | Reduction in 1784 | 273 |
| 41. | Augmentation in 1787-8. Opposed in 1790 by Mr. Fox, and approved by Mr. Burke | *ib.* |
| 42. | Treaty for 12,000 Hessian troops | *ib.* |
| 43. | Augmentation, 1794-1815 | *ib.* |
| 44. | Parliament evinced no intention of perpetuating a large Standing Army | 274 |
| 45. | Force in arms in 1814, and reductions until 1818 | *ib.* |
| 46. | Reductions made yearly from 1815 to 1818 | *ib.* |
| 47. | Want of police force rendered a large Army necessary | 275 |
| 48. | Gradual increase of numbers till 1857 | *ib.* |
| 49. | Reductions till the Indian Mutiny | *ib.* |
| 50. | With increased numbers the | |


Digitized by Google

Par. Page

State should not retain the old rules of Army administration?.. .. .. .. .. .. 275

51. The status of Commissariat and Store Departments changed from Civil to Military. (1.) As to the Commissariat .. 276

Par. Page

52. (2.) As to the Store Department 276

53. The Military Train .. .. .. 277

54. Purveyor's Department .. .. *ib.*

55. Army Hospital Corps .. .. 278

56. Exclusive policy pursued towards the Army .. .. .. *ib.*


## CHAPTER XIV.

### THE RESERVE FORCES.


1. The Realm has always been defended by its Armed Citizens 279

2. This policy essential to our National strength .. .. .. *ib.*

3. The Conscription Laws of Prussia and France train all Classes to the use of Arms .. *ib.*

„ In England but for the Volunteer System the Poorer Class only would be trained by the State to the use of Arms .. 280

4. Military Power of the Crown now Concentrated .. .. .. *ib.*

5. Consequences of the System. Volunteer force essential for our National Security .. .. *ib.*

6. All Reserve Forces (Local) are under the Lord-Lieutenant. 42 Geo III., c. 90, sec. 5 .. 281

7. Totally distinct Offices as Lord-Lieutenant and Custos Rotulorum held by same person .. *ib.*

8. Office of Lord-Lieutenant is purely Statutory .. .. .. 282

9. His status and function are those of a General in Command of a Military district .. *ib.*

10. As to the Militia as a Reserve Force. Divided into three periods .. .. .. .. .. *ib.*

11. Militia Force, 1792–3 .. .. 283

12. Augmented, 1794 .. .. .. *ib.*

13. Allowed to volunteer into the Regular Forces, 1795 .. .. *ib.*

14. Supplementary Militia, 1796 284

15. Provisional Cavalry .. .. .. *ib.*

16. Scotch Militia established, 1797 *ib.*

17. Volunteers from Militia to Army for "limited" Service, 1798 .. *ib.*

18. Militia Volunteers to serve in Ireland .. .. .. .. .. 285

19. Volunteers exempted from Militia .. .. .. .. .. *ib.*

20. Supplementary Militia abolished, and men encouraged to enlist .. .. .. .. .. *ib.*

21. Opposition to, and result of, the Measure. Act extended .. 286

22. Opposition and Protest in the Lords .. .. .. .. .. 286

23. Militia reduced, 1801 .. .. *ib.*

24. Laws Consolidated .. .. .. 287

25. Militia Consolidation Act, 1802 *ib.*

26. Terms of Service .. .. .. *ib.*

27. Exemptions .. .. .. .. 288

28. Punishment for failing to serve in Militia .. .. .. .. *ib.*

29. Regimental Organisation .. *ib.*

30. Pay the same as Officers and Soldiers .. .. .. .. *ib.*

31. Power in the Crown to increase the Militia .. .. .. .. *ib.*

32. General Summary .. .. .. 289

33. Effect of the Act in the Recruiting for the Army. Ballot the Parent of High Bounty .. .. *ib.*

34. Mr. Windham's Statement of these Results .. .. .. .. *ib.*

35. Originally only a small Bounty for Army Service .. .. .. *ib.*

36. Causes of increase .. .. .. 290

37. Principally the Militia Ballot and Substitutes .. .. .. *ib.*

38. Hence Bounty for Army Service increased .. .. .. .. .. *ib.*

39. Desertion to gain another Bounty .. .. .. .. .. 291

40. Ballot produced "Substitutes" and Desertion .. .. .. .. *ib.*

41. These results shown in the Army of Reserve, 1803–4 .. *ib.*

42. Again on the Militia Ballot, 1807 .. .. .. .. .. .. *ib.*

43. Ballot superseded by Recruiting by beat of Drum .. .. .. 292

44. Militia changed from a Defensive to an Offensive Force. Militia Pay not increased, 1806 *ib.*

45. Mr. Pitt's Policy was to recruit the Army from the Militia .. *ib.*

46. Outline of Statutory enactments for Recruiting from the Militia .. .. .. .. .. 293

47. Results of the Act of 1805 .. *ib.*

48. Same Policy again pursued in 1807 .. .. .. .. .. .. *ib.*


Digitized by Google

Par. Page

49. Ballot to be again resorted to .. 294
50. Outline of Enactment for filling up the Militia .. .. .. *ib.*
51. The effect was to increase the penalty for not serving .. .. 295
52. Extreme necessity only could justify this course .. .. .. *ib.*
53. Ballot limited in Duration .. *ib.*
54. The Act recognised the principle that the Militia should be raised at the cost of the Imperial Revenue .. .. .. 296
55. Results of the Act. Lord Castlereigh's speech. Bill for Volunteering from the Militia *ib.*
56. Measures to recruit the Army and Militia, 1809 .. .. .. 297
57. Outline of 49 George III., c. 4 *ib.*
58. Results of the Act .. .. .. 298
59. Objections to the Provisions of the Act .. .. .. .. .. *ib.*
60. Measure of 1811 .. .. .. *ib.*
61. First to secure an annual supply of men from the Militia. The principle of 51 George III., c. 20 .. .. .. .. .. 299
62. Ballot objected to .. .. .. *ib.*
63. The area of Militia service extended .. .. .. .. .. 300
64. Interchange with Ireland .. *ib.*
65. Provisions of the Interchange Act .. .. .. .. .. .. 301
66. Opposed on various grounds, but chiefly as altering the character of the Militia. 1st Reading .. .. .. .. .. *ib.*
67. 2nd Reading .. .. .. .. *ib.*
68. 30,000 men to be taken from the Militia, 1813 .. .. .. 302
„ With option to serve either as Militia or with the Army .. *ib.*
69. The Provisions of the 51 George III., c. 17. As to the men .. *ib.*
70. As to the officers .. .. .. *ib.*
71. Militia Battalions .. .. .. *ib.*
72. Advantages to Volunteers serving as Militia with the Army 303
73. To enlist into the Army as Soldiers .. .. .. .. .. *ib.*
74. Result of the Act. General Results of Recruiting from the Militia. 1. As to numbers. 2. As to cost .. .. .. .. 304
75. Gradual decline of the Militia Force down to the year 1852 305
76. Re-formation of the Militia Establishment in 1852 .. .. *ib.*
77. Militia Act of 1852, and of later Sessions amending Acts, to the General Militia Act .. .. *ib.*
78. The principal provisions in the New Militia Statutes. 1. Voluntary settlement, with power to enforce service by Ballot .. .. .. .. .. 306
79. 2. The Militia organization entrusted to the Crown .. .. *ib.*
80. 3. The property qualification relaxed in favour of Officers from the Regular Army .. *ib.*
81. 4. As to passing from the Militia to the Regular Army 307
82. 5. The area of Militia Service enlarged .. .. .. .. *ib.*
83. Service of married men in the Militia .. .. .. .. .. *ib.*
84. As to Militia charges that are now borne by the county .. 308
85. Militia enlistments during the Crimean War .. .. .. *ib.*
86. Foreign Service of the Militia *ib.*
87. Position of the Militia towards the Regular Army .. .. 309
88. Both recruited by Volunteers from the same social class .. *ib.*
89. Training the Militia with the Army in camps of instruction 310
90. Reports on the Militia, 1859-60, 1866-7 .. .. .. .. .. *ib.*
91. Present Militia Establishment 311
92. History of the Volunteer Force .. .. .. .. .. *ib.*
93. The Establishment of Volunteers in constant training .. *ib.*
94. Volunteers originally grafted on the Militia Establishment 312
95. Present Volunteer system founded in 1802 .. .. .. *ib.*
96. Defensive force raised by Mr. Addington's Ministry, 1803 *ib.*
97. Volunteers were exempt from serving in Regiments of the Army or Militia .. .. .. 313
98. The expediency of these exemptions doubtful .. .. 314
99. Mr. Pitt's approval of the Ministerial Policy as to the Volunteers .. .. .. .. .. *ib.*
Mr. Pitt's views on Volunteer System .. .. .. .. .. 315
100. Volunteer Establishment to be six times the strength of the Militia .. .. .. .. .. 315
101. Strength of the Volunteer Army, 1803–4 .. .. .. 316
102. Strictly Local force .. .. *ib.*
103. The Yeomanry Force .. .. *ib.*
104. Volunteer Act, 1804—44 Geo. III., c. 54 .. .. .. .. 317
105. Provisions common to the Yeomanry and Volunteers. Numbers of Yeomanry and Volun-


Digitized by Google

| Par. | | Page |
|---|---|---|
| | teers unlimited. Right to resign without assent of the Crown .. .. .. .. .. | 317 |
| 105. | And to enlist in the Army or Militia without sanction of Volunteer Commanding Officer .. .. .. .. .. | 318 |
| 107. | Exemptions from Militia and other services .. .. .. | *ib.* |
| 108. | Commissions of the Officers .. | *ib.* |
| 109. | Relative Rank of Officers .. | *ib.* |
| 110. | As to Court-martial duties .. | 319 |
| 111. | Armed by the Crown .. .. | *ib.* |
| 112. | Wives and families of both forces .. .. .. .. .. | *ib.* |
| 113 | Officers released from being Public Accountants .. .. | *ib.* |
| 114. | As to Benefit Societies .. .. | *ib.* |
| 115. | Provisions applicable to the Yeomanry. Duty on Invasion or Insurrection .. .. .. | 320 |
| 116. | Other duties voluntarily undertaken .. .. .. .. .. | *ib.* |
| 117. | Duty in aid of the Civil Power | *ib.* |
| 118. | Yeomanry Establishment remodelled, 1828 .. .. .. | 321 |
| 119. | As to the Training and Exercise .. .. .. .. .. .. | *ib.* |
| 120. | As to the Discipline .. .. | *ib.* |
| 121. | Pecuniary Advantages .. .. | 322 |
| 122. | Present Strength of the Force | *ib.* |
| 123. | Volunteer Establishment reduced by Mr. Windham, 1806 | 323 |
| 124. | Mr. Windham's Training Act. Expense of the Volunteers .. | *ib.* |
| 125. | Plan for Training the People for Army Service .. .. .. | 324 |
| 126. | Policy towards the Volunteers | *ib.* |
| 127. | The Training Act .. .. .. | 325 |
| 128. | The principal Provisions of it | *ib.* |
| 129. | Service of, upon Invasion .. | *ib.* |
| 130. | The Training Act not adopted by Lord Castlereagh. Cabinet Memorandum .. .. .. | 326 |
| 131. | Local Militia suggested .. .. | 327 |
| 132. | 1st. Volunteers .. .. .. | *ib.* |
| 133. | 2nd. Local Militia .. .. .. | *ib.* |
| 134. | 3rd. Trained men .. .. .. | *ib.* |
| 135. | As to Population not in any Military Service .. .. .. | 328 |
| 136. | Proposed in Parliament by Lord Castlereagh. Training only, useless, unless Regimental .. .. .. .. .. | *ib.* |
| 137. | Training to aid the Regular Army .. .. .. .. .. | 329 |
| 138. | Strength of the Army to be increased .. .. .. .. | *ib.* |
| 139. | Volunteer quota, as six times that of the Militia, defective | 330 |
| 140. | Training for four years. No Substitutes, but fine for exemption .. .. .. .. | 330 |
| 141. | Bounty to Volunteers. Ballot for deficiency .. .. .. | 331 |
| 142. | Men to be at liberty to enlist into the Army. Volunteers to be permitted to join the Local Militia .. .. .. | *ib.* |
| 143. | Expense 4*l.* per man .. .. | *ib.* |
| 144. | Results of Local Militia Acts | *ib.* |
| 145. | Amendments a departure from original Scheme, 1812 .. .. | 333 |
| 146. | Whole population not trained | *ib.* |
| 147. | Reasons of the Ministers .. | *ib.* |
| 148. | Further departure from the original Scheme, 1813 .. .. | 333 |
| 149. | The Local Militia and Volunteer Force ceased during the Peace .. .. .. .. .. | *ib.* |
| 150. | The Volunteer Force now existing .. .. .. .. .. | *ib.* |
| 151. | The present Volunteer Force differs from the old Volunteer Force .. .. .. .. .. | 334 |
| 152. | Original Proposals by Lord Derby's Government .. .. | *ib.* |
| 153. | Modified by Lord Palmerston's Government .. .. .. .. | *ib.* |
| 154. | Volunteers entitled to a separate Staff and Establishment | *ib.* |
| 155. | Volunteer Act, 1863 .. .. | 335 |
| 156. | Efficiency of discipline .. .. | *ib.* |
| 157. | Property of the Corps .. .. | *ib.* |
| 158. | As to Custody of Arms and acquisition of Rifle Ranges | *ib.* |
| 159. | Strength of Volunteer Force, 1866–7 .. .. .. .. .. | 336 |
| 160. | Reserve Forces under Home Secretary till 1854, and now under War Secretary .. .. | *ib.* |
| 161. | Army Reserve Force .. .. | 337 |
| 162. | All Pensioners liable to Military Service .. .. .. .. | *ib.* |
| 163. | Power of the Crown unlimited | *ib.* |
| 164. | Organization of 1842 .. .. | 338 |
| 165. | The Act of 5 & 6 Vic., c. 70 .. | *ib.* |
| 166. | Military organization developed, 1843 .. .. .. .. | *ib.* |
| 167. | The Army opposed to, or a security for, Freedom? .. | 339 |
| 168. | Outline of the 6 & 7 Vic., c. 95 | *ib.* |
| 169. | The aid to the Civil Power was thus given by Soldiers instead of Constables .. .. | 340 |
| 170. | Position of the Staff Officers | *ib.* |
| 171. | Reserve Force of 1859 .. .. | 341 |
| 172. | Pecuniary advantages to the men .. .. .. .. .. | *ib.* |
| 173. | Extent of their Service .. .. | *ib.* |
| 174. | Arrangement of doubtful expediency .. .. .. .. .. | *ib.* |


Digitized by Google

Par. Page
175. The Army Reserve Force Act, 1867 .. .. .. .. .. 342
176. Reserves in two Classes .. .. *ib.*
177. Officers .. .. .. .. .. *ib.*
178. Training of the Force, and use in aid of the Civil Power .. *ib.*
179. Permanent Service .. .. .. *ib.*
180. Arrangements of doubtful expediency .. .. .. .. 343
181. Strength of Reserve Force in 1868 .. .. .. .. .. *ib.*
182. Reserve Forces in 1761 and 1861 .. .. .. .. .. *ib.*


# APPENDIX.

## NOTES.


Page

A.—Note upon the Statute and Common Law prior to the Reign of Charles I., having Reference to the Defence of the Realm, and the Employment of Soldiers for that Purpose .. .. .. 345

Page
Statute of Winchester, 1285 .. 345
Articles of Enquiry, 1306 .. .. *ib.*
Act of 1326-7 .. .. .. .. 346
Act of 1403-4 .. .. .. .. 347
Act of 1405-6 .. .. .. .. *ib.*
Acts of 1495 .. .. .. .. 350
Act of 1511-12 .. .. .. .. 351
First Statute for Relief of Wounded Soldiers, 1592-3 .. .. 353
Act to Suppress Vagrancy among Soldiers, 1597-8 .. .. .. .. 354
Other Ways and Means for Defence of the Realm—
I. By Tenure of Lands .. .. 355
II. Prerogative Revenue .. .. *ib.*
III. Particular Supplies of Money *ib.*

B.—List of Early Statutes relating to the Militia .. .. .. .. 356

C.—List of Early Statutes relating to the Army, other than the Militia .. .. .. .. .. .. .. .. .. .. .. .. .. 357

D.—A Table of Dates shewing the Time in which the Militia could be raised by Ballot .. .. .. .. .. .. .. .. .. .. 358

E.—A Short Account of the Corps of Gentlemen-at-Arms and Yeomen of the Guard .. .. .. .. .. .. .. .. .. .. .. 359

F.—The Guard to the Sovereign .. .. .. .. .. .. .. .. .. 363
Constant attendance at the Palace 364 | Relation of the Sovereign to the Guards 365

G.—As to Half-Pay, Pension, and other Non-effective Allowances granted to the Army since the Revolution .. .. .. .. .. 366

*Pensions for Soldiers:*—
Geo. I.'s Regulations .. .. .. 366
Mr. Windham's Act (47 Geo. III., c. 69) .. .. .. .. .. .. *ib.*
Pension Regulations of Oct. 1806 367
Act repealed and Acts consolidated, 1826 .. .. .. .. 368
Pensioners always liable to serve the Crown .. .. .. .. .. *ib.*
William III.'s reign, half-pay a retaining fee .. .. .. .. 369
Half-pay Warrants, 1695-8 .. 369
Gratuity on Disbandment, 1697 *ib.*
Commons Guardians of Half-pay List, 1699 .. .. .. .. 370
Gratuity on Disbandment, 1713 371
Half-pay List reduced by Geo. I. 372
Official Inquiry and Debate on Half-pay List, 1717-18 .. .. 373
History of Half-pay from 1718 to be traced with Pensions to Officers .. .. .. .. .. 374


Digitized by Google

Page

Unattached Pay, 1814 .. .. 374
Retired Pay .. .. .. .. .. 375

*Pensions for Officers:—*

Officers' Pensions, 1718 .. .. *ib.*
Surplus of Half-pay appropriated to Pensions, 1719 .. .. .. 376
Pension Fund increased, 1782 .. 377
Half-pay a Compensation for Wounds, &c., 1811 .. .. .. *ib.*
Half-pay a reward .. .. .. 378
Pensions for Wounds, 1812 .. *ib.*
Finance Committees of 1817 and 1828 .. .. .. .. .. .. 378
Pensions for Distinguished Service, 1833 .. .. .. .. .. 379
Pensions to Officers' Widows, 1708-1828 .. .. .. .. .. .. *ib.*
Pensions to deceased Officers' Children, 1720-1827 .. .. 382
Pensions to other Relatives of deceased Officers, 1809-34 .. 383
The 500*l.* a-year Fund .. .. 384

H.—On the Employment of Civil Servants in the Administration of the Army .. .. .. .. .. .. .. .. .. .. .. .. .. *ib.*

I.—Duration of the Several Mutiny Acts in the Reigns of William and Mary and of Queen Anne .. .. .. .. .. .. .. .. 389

J.—Note as to the Liability of the Militia and the Reserve Forces to the Mutiny Act .. .. .. .. .. .. .. .. .. 391

I. *As to the Militia* .. .. .. 391
How far liable .. .. .. .. *ib.*
Militia Acts .. .. .. .. *ib.*
II. *As to the Yeomanry* .. .. .. 392
III. *As to the Volunteers* .. .. 392
IV. *As to the Reserve Force* .. 393
V. *The Militia Reserve* .. .. *ib.*

K.—Note on the Law of Billeting in Scotland before the Union with England .. .. .. .. .. .. .. .. .. .. .. 394

L.—Note as to the Law on the same Subject in Ireland before the Union with Great Britain .. .. .. .. .. .. .. .. .. 396

M.—A Table shewing the Number of Officers and Men employed in each Year, as stated in the Preambles to the Mutiny Acts from 1721 to 1866 both inclusive .. .. .. .. .. .. .. 398

N.—Note on the Honourable Artillery Company of London .. .. 401

O.—The Establishment of Military Prisons .. .. .. .. .. .. 405

P.—The Prussian System of Conscription .. .. .. .. .. .. .. 406

Q.—The French System of Conscription .. .. .. .. .. .. .. 407

R.—Outline of the Local Militia Act, 52 Geo. III., c. 38 .. .. .. 408

# ILLUSTRATIONS.

Page

I.—Indenture—containing an Inventory of the Armament and Furniture of the Castle of Berwick-on-Tweed, in 1539 .. .. .. 413

II.—Letter from the Duke of Richmond, upon the Defence Act, 1803, and the King's Orders issued thereunder .. .. .. .. .. 417

III.—Copy of Commission (in 1624), issued by James I. to the Mayor of Dover, and other Persons, to Execute Martial Law .. .. 422

IV.—Extract from the Petition of Right .. .. .. .. .. .. .. 424

V.—Appointment of Commander-in-Chief and Generals under him by Charles I., in 1638 .. .. .. .. .. .. .. .. .. .. .. 425

Digitized by Google

Page

VI.—Lawes and Ordinances of Warre, for the better Government of His Majesties Army Royall, in the present Expedition for the Northern Parts, and Safety of the Kingdome, under the conduct of His Excellence the Right Honourable Thomas Earl of Arundel and Surrey, Earl Marshall of England, &c., and Generall of His Majesties Forces .. .. .. .. .. .. .. 429

Laws and Ordinances of War .. 429
Religion and Breach of Moral Duties .. .. .. .. .. 430
The Safety of the Royal Army .. 431
Captains' and Soldiers' Duties in Particular .. .. .. .. 432
Camp or Garrison .. .. .. 435
Lawful Spoils and Prizes .. .. 437
The Administration of Justice .. 438
The Oath .. .. .. .. .. 439

VII.—Extract from Letter of Lord Conway, dated Newcastle, 13th July, 1640, as to the Illegality of Executing Men under Martial Law .. .. .. .. .. .. .. .. .. .. .. .. 440

VIII.—Extracts from Laws and Ordinances of Law, established for the better Government of the Army, by the Earl of Essex, 1642 .. .. .. .. .. .. .. .. .. .. .. .. .. 442

Duties towards Superiors and Commanders .. .. .. .. 442
Duties of Commanders and Officers in Particular .. .. .. 443
Administration of Justice .. .. 444

IX.—(1.) Instructions to the Attorney-General as to the Forfeiture of a Conventicle House for a Guard House .. .. .. .. 445

(2.) Letter replying to Complaints of the Conduct of the Inhabitants towards the Soldiers at Yarmouth .. .. .. *ib.*

X.—Extracts from 'Orders and Articles of Warr composed and corrected by the advice of the Duke of Albemarle, Captain-Generall of His Majesty's Armyes. April 9th, 1666' .. .. 446
Administration of Justice .. .. .. .. .. .. .. .. 447

XI.—Documents illustrating the Exemption of the Army from Legal Process .. .. .. .. .. .. .. .. .. .. .. .. 449

XII.—Billeting Order of Charles II. .. .. .. .. .. .. .. .. 452

XIII.—Order to provide a Guard-House, &c., at Ipswich .. .. .. .. *ib.*

XIV.—Copy of a Record in the Public Record Office, entituled "State Papers, Domestic Proclamation, Charles II." No. 305 453

XV.—Royal Warrant and Orders thereunder for Discharging all Popish Recusants from the Army in 1678 .. .. .. .. .. 454

XVI.—Extract from the Rules, Orders, and Instructions for the future Government of the Office of Ordnance, Anno Regni 35 Car. II. Regis. 25 July, 1683 .. .. .. .. .. .. .. 456

An Establishment of Annual Payments and Allowances to be made upon the Quarter Books of the Office of Ordnance .. .. .. .. .. .. 468

XVII.—Warrant as to Sale of Officers' Commissions, and the Deduction of Poundage therefrom for Chelsea Hospital .. .. .. 470

XVIII.—Warrant for Deduction of Poundage for Support of Chelsea Hospital .. .. .. .. .. .. .. .. .. .. .. .. 471

XIX.—Order for Military Establishments to be approved by the Treasury and Secretary of State .. .. .. .. .. .. .. 472

Digitized by Google

Page

XX.—Account of Office Disbursements of Secretary at War in 1673 472

XXI.—Extract from Parliament Roll (1 Henry IV.), as to the Marshall's Court .. .. .. .. .. .. .. .. .. .. .. .. 473

XXII.—Warrant of James II. for holding a Court-Martial, under the Articles of War, for the better Government of His Majesty's Land Forces during the Rebellion of Monmouth .. .. .. 475

XXIII.—The Proceedings of one of the Courts-Martial held under the above Warrant .. .. .. .. .. .. .. .. .. .. 476

XXIV.—Letter from Secretary at War as to Trial of Offenders by the Common Law, the Operation of the Articles of War having ceased .. .. .. .. .. .. .. .. .. .. .. .. 478

XXV.—Circular Letter to Officers that are Parliament Men .. .. 479

XXVI.—Orders by Peers of the Realm to Re-assemble all the Protestant Officers and Soldiers disbanded by Lord Faversham *ib.*

XXVII.—Orders for, and Papers relating to, the Disbandment of Irish Roman Catholic Regiments, and Marching them to the Isle of Wight for Embarcation to Ireland .. .. .. .. .. 480

(2.) Order for the Governor of the Isle of Wight to prepare for their Reception .. .. .. .. .. .. .. .. .. .. .. 481

(3.) Route for their March to Portsmouth .. .. .. .. .. .. 482

(4.) Order to the Governor of Portsmouth to receive them .. .. *ib.*

(5.) Memorandum for Colonel Beaumont .. .. .. .. .. .. *ib.*

(6.) Extract of a Letter to Mr. Pepys, dated Whitehall, the 31st December, 1688 .. .. .. .. .. .. .. .. .. .. 483

(7.) Order to the Governor of the Isle of Wight to receive them .. *ib.*

(8.) Letter to Sir Robert Holms from Secretary at War, as to the safe Custody of the Irish in the Isle of Wight .. .. .. 484

(9.) Order to the Paymaster-General of the Forces to issue Subsistence Money .. .. .. .. .. .. .. .. .. .. 485

XXVIII.—Letter from the Prince of Orange to Earl of Craven, apprising him of the Prince's intended Arrival at Whitehall, and for the Removal of the King's Guard .. .. .. .. .. *ib.*

XXIX.—General Order by the Prince of Orange for Re-assembling of the Army .. .. .. .. .. .. .. .. .. .. .. .. 486

XXX.—Report of the Law Officers—That the Act of Settlement did not prohibit the Enlistment of Foreign Soldiers .. .. 487

XXXI.—Table showing the Pay and Allowances of the Soldier and Agricultural and Town Labourer .. .. .. .. .. .. .. 489

XXXII.—The Commission of the Duke of Marlborough .. .. .. .. 490

XXXII.*—Treasury Regulations as to Military Expenditure .. .. 491

Regulations in respect to the carrying on Fortifications or other Military Services by Directions of any of Our Commanders-in-Chief, Governors, Lieutenant-Governors, or other Officers Civil or Military, commanding in any Part of Our Dominions, or by Directions from the Master-General of Our Ordnance, or Our Board of Ordnance, within the Limits of any Command or Government .. .. .. .. .. .. .. 492

Digitized by Google

Page

XXXIII.—Marching Order to the Troops to Proceed to the Sea Coast and Embark for Holland; against which the Scots Guard Mutinied .. .. .. .. .. .. .. .. .. .. .. .. .. 497

XXXIV.—Letter as to Scots Regiment of Guards, and the Capture of Mutineers .. .. .. .. .. .. .. .. .. .. .. .. .. *ib.*

XXXV.—Order for the Mutineers to be brought to London .. .. 498

XXXVI.—The First Mutiny Act (1 William and Mary, cap. 5) .. 499

XXXVII.—Circular from Secretary at War (addressed to the Earl of Oxford) conveying the Thanks of the House of Commons to the Army of James II. .. .. .. .. .. .. .. .. .. 501

XXXVIII.—Report of Law Officers as to the Constitution of Courts-martial, other than those held under the Mutiny Act .. .. 502

XXXIX.—(1.) Warrant of William the Third for holding a Court-martial under the Mutiny Act in force for the Trial of Offenders .. .. .. .. .. .. .. .. .. .. .. .. .. *ib.*

(2.) Proceedings of a Court-martial under the last Warrant, and Confirmation of the Sentence, with a Direction for the Condemned Men to cast Lots for Life .. .. .. .. .. .. 503

XL.—Letters as to the Preparation and Issue of the First Articles of War, under the Mutiny Act, 1715 .. .. .. .. .. .. 505

XLI.—(1.) Report of Sir E. Northey on the Mutiny Act of 3 & 4 Anne .. .. .. .. .. .. .. .. .. .. .. .. .. .. 506

(2.) Report as to a Soldier's Liability to Trial and Punishment for an Offence committed against a Mutiny Act that had expired .. .. .. .. .. .. .. .. .. .. .. .. .. 508

(3.) Report of Sir Robert Raymond upon the Articles of War, 1721 *ib.*

(4.) Reports from the Law Officers on the Articles of War and the Mutiny Acts of various Dates, and as to the Mitigation of Penal to Corporal Punishment .. .. .. .. .. .. .. 509

(5.) Report of the Law Officers thereon .. .. .. .. .. .. 510

(6.) As to increasing the Punishment of the Mutiny Act by Articles of War .. .. .. .. .. .. .. .. .. .. .. .. 511

(7.) Report thereon .. .. .. .. .. .. .. .. .. .. .. *ib.*

(8.) As to the Amendments of the Mutiny Act according to the last Report .. .. .. .. .. .. .. .. .. .. .. .. 513

(9.) Proposed Amendments and Report .. .. .. .. .. .. *ib.*

(10.) Report of the Attorney-General (1737) as to giving the President of a Court-martial the Power to confirm its Proceedings 515

(11.) Report of Sir L. Kenyon upon the Prosecution of a Printer for Publishing a Trial by Court-martial .. .. .. .. .. 516

(12.) As to Amendments in 1804 .. .. .. .. .. .. .. .. *ib.*

XLII.—Report of Law Officers as to Articles of War limiting the Discretion conferred on a Court-martial by the Mutiny Act 517

XLIII.—Letters as to Revision of Court-martial Sentence, and the substitution of Corporal for Capital Punishment .. .. .. 518

Digitized by Google

Page

XLIV.—Letter from Secretary at War to Judge-Advocate-General, stating that a Court-martial had no Jurisdiction in case of Murder .. .. .. .. .. .. .. .. .. .. .. .. .. 519

XLV.—Report of Law Officers on the Expediency of sending an Officer (after Punishment by a Court-martial) for Trial by a Criminal Court .. .. .. .. .. .. .. .. .. .. .. .. .. 520

XLVI.—General Order (No. 522) of the Commander-in-Chief prohibiting Soldiers from attending Orange Lodges or other Party Meetings .. .. .. .. .. .. .. .. .. .. .. .. .. 521

XLVII.—Reports of the Judge-Advocate-General (Hughes) and Sir P. Yorke, as to the Trial of a Witness for Perjury before and by a Court-martial .. .. .. .. .. .. .. .. .. 522

(2.) B., Evidence in a Trial before a General Court-martial, is guilty of a Notorious Perjury .. .. .. .. .. .. .. 523

(3.) Report of Sir D. Ryder and Sir W. Murray on the same Subject .. .. .. .. .. .. .. .. .. .. .. .. *ib.*

XLVIII.—Report of the Attorney-General (1745) as to the Arrest as Debtors of Deserters from the Army .. .. .. .. .. 524

XLIX.—Letter to General Carpenter from the Secretary at War, as to the Trial of Half-pay Officers by Court-martial as Deserters .. .. .. .. .. .. .. .. .. .. .. .. .. 525

L.—Reports of the Law Officers as to the Liability to the Mutiny Act of Persons employed in the Barrack Department .. .. *ib.*

LI.—The Second Clause of the Mutiny Act, 1868 .. .. .. .. .. 528

LII.—Reports of Sir J. Willes on the Jurisdiction of a Court-martial to try for Offences where there is no Court of Civil Judicature 529

(1.) Case of the two Mercers at Placentia, for killing John Sullivan, a Soldier, with the Attorney-General's Opinion. 26th February, 1733 .. .. .. .. .. .. .. .. .. *ib.*

(2.) Case of Soldiers coining Spanish Currency at Gibraltar .. .. 532

LIII.—Report of Sir D. Ryder and Sir W. Murray upon the Trial by Court-martial of Clippers and Coiners in Flanders .. .. .. 534

LIV.—Report of the Law Officers as to the Question of the Legality of Apprehending a Discharged Soldier in England, and of sending him abroad for Trial by a Court-martial for an Offence there committed, while he was amenable to the Articles of War .. .. .. .. .. .. .. .. .. .. .. 536

LV.—Report of Mr. D. Strange and Sir J. Strange as to Trial in England of a Deserter from Flanders .. .. .. .. .. .. 537

LVI.—Reports of Sir D. Ryder and Sir Charles Gould as to Trial of Deserters in one Colony by a Court-martial formed in another Colony .. .. .. .. .. .. .. .. .. .. .. 538

(1.) Sir D. Ryder's Report .. .. .. .. .. .. .. .. .. *ib.*

(2.) Sir Charles Gould's Report .. .. .. .. .. .. .. .. 539

(3.) Final Report of the Attorney-General .. .. .. .. .. 541

Digitized by Google

Page

LVII.—Report of the Law Officers as to Holding Courts of Enquiry under the Authority of the Mutiny Act .. .. .. .. .. 541

Page
Case .. .. .. .. .. .. 541
Law Officers' Report .. .. .. 544

Observations on the Power of holding Courts-martial of Enquiry .. .. .. .. .. .. 547

LVIII.—(1.) Warrant of William III. for the Removal of Troops from Towns, &c., during the Time of any Parliamentary Elections 550

(2.) Circular issued by the Secretary at War at the next Elections 551

LIX.—War Office Circular relative to the Unauthorized Assembly of Volunteers .. .. .. .. .. .. .. .. .. .. .. .. *ib.*

LX.—(1) Reports of the Law Officers on the 8 Geo. II., cap. 30 .. 552

(2.) Letters and Report of the Attorney-General (Sir L. Kenyon) on the same Subject .. .. .. .. .. .. .. .. .. 553

(3.) Statement and Report of the Attorney-General (Sir Thos. Plumer) on the same Act .. .. .. .. .. .. .. .. 555

LXI.—Order of Charles II. for Removal of Troops from Towns during the Assizes therein .. .. .. .. .. .. .. .. .. .. 556

LXII.—Letters to and from the Judges as to Removal from or Confinement in Barracks .. .. .. .. .. .. .. .. .. 557

LXIII.—Report of Law Officers as to Trial of Governor Wall by Court-martial .. .. .. .. .. .. .. .. .. .. .. .. 565

LXIII.*—Report of Sir Simon Harcourt on the Discharge of Arrested Soldiers from Civil Custody .. .. .. .. .. .. .. .. 566

LXIV.—General Route .. .. .. .. .. .. .. .. .. .. .. .. 567

LXV.—Declaration by the Prince of Orange for the Better Quartering of the Forces .. .. .. .. .. .. .. .. .. .. 568

LXVI.—Reports of the Law Officers on the subject of Billeting Troops under the Mutiny Act .. .. .. .. .. .. .. .. 569

(1.) Landlords refusing to entertain Soldiers .. .. .. .. .. *ib.*

(2.) Billeting in Westminster, and Choice of Quarters by an Officer 570

(3.) Report of Sir P. Yorke on Officers choosing Quarters : .. *ib.*

(4.) Report of Sir P. Yorke that Billeted Horses are not liable to a Distress for Rent .. .. .. .. .. .. .. .. .. *ib.*

(5.) Report as to Quartering Horses in Stables far distant from the Men .. .. .. .. .. .. .. .. .. .. .. .. 571

(6.) Opinion of Sir J. Willes .. .. .. .. .. .. .. .. 572

(7.) Report as to Liability of Innkeepers to Provide for Subsistence at a Statutory Price .. .. .. .. .. .. .. .. .. *ib.*

(8.) Statement as to the Opposition made to the Billeting of Soldiers (1793), and Report of the Law Officers .. .. .. 573

LXVII.—(1.) Letter from Secretary at War as to Publicans taking down their Sign Boards, &c., to avoid the Billets of Soldiers 575

(2.) Letters as to the Complaints of Publicans and Others in regard to the Billeting of Soldiers .. .. .. .. .. .. 576

(3.) Letter of Secretary at War as to Meeting of Members of both Houses of Parliament relative to the Mutiny Bill .. .. .. 577

Digitized by Google

Page

LXVIII.—Memorandum showing the Origin of the "Allowance for Men on a March," and the several Alterations which have been made in the Rate thereof, at different Dates, to 14th May, 1858 .. .. .. .. .. .. .. .. .. .. .. .. 577

LXIX.—Strength and Composition of the British Army:—

(1.) Active Regular Forces .. .. .. .. .. .. .. .. .. 579

(2.) Depôt and Garrison Troops in the United Kingdom .. .. 580

(3.) Colonial Regiments and Corps .. .. .. .. .. .. .. 581

(4.) Local Troops in British India .. .. .. .. .. .. .. 582

(5.) Troops of Reserve in the United Kingdom .. .. .. .. .. 583

LXX.—Warrant giving Military Rank to the Royal Artillery .. 584

LXXI.—Report as to the Displacement or Resignation of Militia Officers by or to the Lord-Lieutenant .. .. .. .. .. .. *ib.*

LXXII.—Commission of a Lord-Lieutenant .. .. .. .. .. .. .. 586

LXXIII.—Table showing in Column (A) the Total of Casualties, and in Column (B) the Total of Enlistments in the Regular Army for Each Year, from 1803 to 1813 .. .. .. .. .. 588

LXXIV.—Report as to the Service of the Militia under the General and other Officers in His Majesty's Regular Army .. .. .. 589

LXXV.—Summary of Return relating to the Militia, 1867 .. .. .. 591

LXXVI.—Report as to the Power of Volunteer Officers to resign their Commissions .. .. .. .. .. .. .. .. .. .. .. 592

LXXVII.—Case respecting Allowance to be made to Corps of Yeomanry Cavalry on their being Called Out .. .. .. .. .. .. *ib.*

LXXVIII.—Extracts from the Late Lord Castlereagh's Cabinet Memoranda as to the Creation of Reserve Forces .. .. .. .. 593

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# THE MILITARY FORCES

OF

# THE CROWN.

## CHAPTER I.

### DEFENCE OF THE REALM, AND ERECTION OF FORTIFICATIONS.

1. The Primary object for which the Military forces of the Crown are retained in arms is the Defence of the Realm. For offensive wars the law of England has made no provision; but for the defence of our shores against invasion, the prerogative powers of the Crown, in times of great national emergency, have been found to be sufficient. The Secondary object for which the military forces being in arms may be used, is to aid the civil power in the preservation of the public peace; and though, in reigns[1] anterior to that of Her Most Gracious Majesty, ministers have urged Parliament to sanction the increase and maintenance of a standing army for this secondary purpose, it may be doubted whether these considerations will again be suffered to prevail.

Defence of the realm the primary object for which military forces are retained in arms.

2. But, besides men, the Crown needs other means of defending the realm, as "fortifications and works,"— which have ever been deemed essential for the safety of any state. It is proposed, therefore, as introductory to the general subject, to give an outline of the prerogative and statutory powers held by the Crown for the erection of fortifications and the acquisition of land for the defence of the realm.

Fortifications and works.

3. The Defence of the Realm the Constitution has wisely intrusted to the Crown. What are the nature and extent of

[1] See 37 H. D. (O. S.), p. 763; 52 ib. (3rd), p. 1095; 103 ib., p. 68.



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the powers of the Crown for this purpose became, fortunately for succeeding ages, the subject of legal contention between the Crown and Mr. Hampden in the reign of Charles I.[1] Since that period no such controversy has arisen, and therefore the great landmarks in our constitutional law are to be found in Mr. St. John's argument, and in the judgments of Sir George Crooke and Sir R. Hatton, against the Crown in that celebrated cause.

The obligation of defending the realm rests upon the Crown.

4. In earlier cases than Mr. Hampden's, these high prerogative powers (as they are now understood) had been referred to and admitted. Thus, in a case coming before the Common Law Courts in the 29 Henry VIII., the judges said,[2] "We will agree that in some cases a man may justify the commission of a tort, and that is in cases where it sounds for the public good; as in time of war a man may justify making fortifications on another's land without licence; also a man may justify pulling down a house on fire for the safety of the neighbouring houses, for these are cases of the common weal."[3] And again,[4] in the case of the King's prerogative in Saltpetre, 12 Coke, Rep. 13 (temp. 4 James I.), the Court resolved, "by the common law every man may come upon my land for the defence of the realm, as appears 8 Edward IV., 23; and in such case, on such extremity, they may dig for gravel for the making of bulwarks, for this is for the public, and every one hath benefit by it; but after the danger is over the trenches and bulwarks ought to be removed, so that the owner shall not have prejudice in his inheritance, and for the commonwealth a man shall suffer damage as for saving of a city or a town, a house shall be plucked down if the next be on fire, and the suburbs of a city in time of war for the common safety shall be plucked down, and a thing for the commonwealth every man may do without being liable to an action, as it is said in 3 Hen. VIII., fol. 15, and in this case the rule is true, *princeps et respublica ex justâ causâ possunt rem meam auferre.*"[5]

Powers of the Crown for the defence of the realm.

5. But in the Ship-Money case, the whole subject was

[1] 3 How. Sta. Trials, pp. 826 to 1306.
[2] A.D. 1537.
[3] In Malverer *v.* Spinke, 1 Dy. Rep., p. 36.
[4] 1606.
[5] Presented as a Grievance A.D. 1606, 1 Com. Journ., p. 317; see Commissions, p. 16-27, for getting Saltpetre, 18 Rym. Fœd., pp. 915, 918.

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thoroughly investigated; and Mr. St. John's argument contains an exhaustive statement of the "known and undoubted ways and means," whereby the law hath provided for the defence of the realm both on land and sea. As Military Tenures—from which these ways and means sprang—have been long since abolished,[1] it would little avail to any practical purpose here to enumerate them; but other passages from that argument will serve to explain what the Powers of the Crown for the defence of the realm continue to be.

The case of ship money. A.D. 1637.

6. In arguing the case, certain positions in favour of the Crown appeared to Mr. St. John too clear for controversy. They were indisputable, and therefore formed no part of his argument in resisting the payment of ship-money. For the purpose of the present work, they may be limited to four in number, and be given in his own words:—

Undoubted powers of the Crown in ordinary times.

(1). "There is," he says, "no question to be made, but the law has entrusted the person of His Royal Majesty with the care of this defence. The defence and protection which we have in our bodies, lands, and goods, against any within the realm, we know it is from him—for all jurisdiction legal, both ecclesiastical and civil, which defends us in them, is wholly in His Majesty.[2]

Mr. St. John's argument.

(2). "Neither hath the law only entrusted the care of defence to His Majesty, but it hath likewise secondly put the *Armat' Potestat'* and means of defence solely into his hands, for when the enemy is by him discovered and declared, it is not in the power of the subject to order the way and means of defence, either by sea or by land, according as they shall think fit, for no man without Commission, or Special Licence from His Majesty, can set forth any ships to sea for that purpose; neither can any man without such Commission or Licence, unless upon sudden coming of enemies, erect a fort, castle, or bulwark, though upon his own ground, neither but upon such emergent cause is it lawful for any Subject, without special commission, to arm or draw together any troops or companies of soldiers, or to make any general collection of money of any of His Majesty's subjects, though with their consent.[3]

[1] 12 Car. II. c. 24. Probably the last summons under the old law was that given in 3 Rush., p. 1227. [2] P. 859. [3] P. 860.



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(3). "Neither is His Majesty armed only with his primitive prerogative of Generalissimo and Commander-in-Chief that none can advance towards the enemy until he gives the signal, nor in other manner than according to his direction, but also with all other powers requisite for the full execution of all things incident to so high a place, as well in times of danger as of actual war. The sheriff of each county, who is but His Majesty's deputy, he hath the *posse comitatûs*, and therefore it must needs follow that the *posse regni* is in himself.

(4). "My Lords, not to burn daylight longer, it must needs be granted that in this business of defence the *suprema potestas* is inherent in His Majesty as part of his Crown and Kingly dignity. So that as the care and provision of the law of England extends in the first place to foreign defence, and secondly lays the burden upon all."[1]

Extraordinary powers in case of war or invasion.

7. These were the ordinary powers of the Crown, but in times of war, or invasion, the maxim "*Salus populi suprema lex*" must prevail; the subject's goods might be taken or destroyed without his consent. And as *inter arma leges silent*, so the rule of Bracton that *tempus guerræ est tempus injuriæ* is likewise true; for after the war is ended, the law, as not having cognizance of things then done, gives no remedy for wrongs at that time sustained. But *tempus belli*, when property ceaseth, is not upon every intestine or defensive war, but only at such times when the course of justice is stopped, and the Courts of Justice shut up.[2]

"In these times of war, not only His Majesty, but likewise every man that hath power in his hands may take the goods of any within the realm, pull down their houses, or burn their corn, to cut off victuals from the enemy, and do all other things that conduce to the safety of the kingdom, without respect had to any man's property."[3]

Judgment of Sir George Croke.

8. The language of the Judges who gave their judgment against the Crown, is equally clear; Sir George Croke, though speaking decisively against the imposition of ship-money, "that no necessity could procure this charge without the previous sanction of Parliament" conceded

[1] P. 860. [2] P. 904. [3] P. 905.

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these powers to the Crown, "The law," he said, "provideth a remedy in case of necessity and danger, for then the King may command his subjects without Parliament to defend the kingdom. How? By all men of arms whatsoever for the land, and by all ships whatsoever for the sea, which he may take from all parts of the kingdom, and join them with his own navy, which hath been the practice of all former kings in their necessity."[1]

And again, "Royal power, I account, is to be used in cases of necessity and imminent danger, when ordinary courses will not avail, for it is a rule *non occurrendum est ad extraordinaria quando fieri potest per ordinaria*, as in cases of rebellion, sudden invasion, and some other cases where Martial Law may be used, and may not stay for legal proceedings. But in a time of peace, and no extreme necessity, legal courses must be used, and not royal power."[2]

9. Sir Richard Hatton thought this power so inherent in the Crown that no Act of Parliament could take it away. "I confess," he said, "there are some inseparable prerogatives belonging to the Crown, such as the Parliament cannot sever from it; and I will prove to you out of books, cases, and statutes, that the King cannot release his tenure *in capite*. It was endeavoured that a law should be made that the court of wards should be shut up, it was resolved that it had been a void law. Such is the care for the defence of the kingdom, which belongeth inseparably to the Crown, as head and supreme protector of the kingdom. So that, if an Act of Parliament should enact that he should not defend the kingdom, or that the King should have no aid from his subjects to defend the kingdom, these Acts would not bind, because they would be against natural reason."[3] Of Sir Richard Hatton.

And again, "I do agree in the time of war when there is an enemy in the field, the King may take goods from the subject, such a danger and such a necessity ought to be in this case as in the case of a fire like to consume all without speedy help, such a danger as tends to the overthrow of the kingdom."

[1] P. 1134. [2] P. 1162. [3] Pp. 1194-5.

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10. Constitutional writers,[1] and judges in subsequent cases, have confirmed these views. "There are many cases in which individuals sustain an injury," said Justice Buller, "for which the law gives no action—for instance, pulling down houses, or raising bulwarks for the preservation and defence against the King's enemies. The Civil Law writers say that the individuals who suffer have a right to resort to the public for a satisfaction, but no one ever thought that the Common Law gave an action against the individual who pulled down the houses, &c. The maxim here applies '*Salus populi suprema lex.*'"[2]

Confirmed by Constitutional writers and later decisions.

So in the recent case, Mr. Justice Willes remarked, "Every man has a right to the enjoyment of his land, but in the event of a foreign invasion the Queen may take the land for the purpose of setting up defences thereon for the general good of the nation. In these and such like cases private convenience must yield to public necessity."[3]

11. The means by which the Crown, in ordinary times, provided for the defence of the realm was by the erection of fortresses at the mouths of the principal rivers, and at other points upon the coast. Each of these, when armed and furnished for residence, *belonged* to the Crown to maintain as its own estate, and was handed over to the custody and control of a governor appointed by the Crown, who was admitted into possession upon an Indenture containing an exact enumeration of all the articles of armament and furniture—down to the locks and keys on the bed-chamber doors.[4] In later times, when a rate of pay was fixed by regulation, and an establishment settled for each fortress, the Governor was made responsible by Royal Warrant for all damages done to the works by his own or the permissive use he granted to others during his governorship; the amount of such damage being

Means of defence. Fortresses.

Custody and care of the same.

[1] Hal. Const. Hist. i., p. 277. [2] Governor *v.* Meredith, 4 Ter. Rep., p. 796.
[3] Hall *v.* Barlow, 4 Scott (N. S.), p. 345.
[4] See the Indenture of Admission to Berwick-on-Tweed in 1539 by Sir William Ewers, the Governor, in Appendix (Illustrations) I.

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ascertained by oath, and deducted as a stoppage from his pay.[1]

12. The maintenance and repair of these defensive works against decay fell upon the King,[2] though for the cost thereof provision had been made by the Military Tenures. Dover Castle, as the key to the kingdom, had, it was said, 200 tenures by Castle Guard for its defence upon invasion, and other tenures to provide for its repair.[3] Upon the abolition of Military Tenures, the maintenance of these fortresses fell upon the Crown in the first instance, and upon Parliament[4] ultimately, though the residents in many towns found it to be to their interest by voluntary subscriptions to maintain and arm defensive works, to protect their Town and Trade from invaders in war time.[5]

Expense of maintenance.

13. From an early period the Crown had asserted its exclusive right to erect or maintain any castle or defensive work in the realm.[6] When Lord Coke wrote his first Institute,[7] he begged the reader "to note by the way that no Subject can build a castle, or house of strength imbattled, &c., or other fortress defensive, without the licence of the King, for the danger which might ensue if every man[8] at his pleasure might do so." There was no similar prohibition against the possession of ordnance[9] or arms by the subject, though the Gunmakers' Company, when incorporated in Charles I's reign, were bound to render an account of their make and sales to the Board of Ordnance. But for any Subject to withhold the King's fortresses or ordnance for six days after demand made was, by the 26th Hen. VIII., cap. 13, declared to be high treason.[10] Neither did any prohibition exist against drilling in the use of arms, or training in military exercises,

No subject could build a fortress without licence from the Crown.

[1] See Regulations of 1737 (Ord. Order Bk. p. 326), and of 22 Dec. 1761. (Ib. No. 36, p. 95.)

[2] 2 Com. Journ., p. 495. [3] 3 Sta. Tr., p. 868. [4] See 9 Com. Journ., p. 498.

[5] See MS. Report of James Bramham to the Board of Ordnance as to all the Defensive Works on the East coast, March, 1781, 24 & 25 Vic., c. 45, s. 20.

[6] See Hen. V.'s Articles of War, which forbid any man to edify or strengthen any manner of place without the special licence of the King or his council. (Grose, 'Antiquities of England,' Pref. p. 43.) [7] P. 5*a*.

[8] As to the destruction of Castles by order of Parliament, see 5 Com. Journ., pp. 96, 124, 234, 243, 250. [9] 2 Com. Journ., p. 724.

[10] 2 Edw. III. c. 3, Butt. *v.* Conant., 1 Brod. & Bing. 588.

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till the year 1819, when the government of the late Lord Liverpool succeeded, after great opposition, in carrying the Act 60 Geo. III. c. 1, which renders the sanction of the Crown or of two justices necessary for that purpose.[1]

The Ordnance Department had the charge of all forts and armaments.

14. From the earliest[2] times the department of the state charged with the care of Crown fortresses and their armaments, was the Board of Ordnance, taking its name, as Lord Coke[3] supposed, from an "ordinance," or law, anciently made, but not extant, to regulate the bore, size, and bulk of artillery, of which, "albeit, the name only remaineth." Until the year 1667 it had been left to the Local Governors of these works to cut Crown timber for and to repair them, but great abuses crept in. An Order in Council was therefore made, under date of the 26th April, 1677, committing the care of all fortifications to the Ordnance, and authorising the Board to call all governors and commissioners holding appointments to account.

Those fortresses not garrisoned with troops.

See 12 Car. II. c. 15, sec. 3 (rule 4) 5 Stat. Realm, p. 238.

15. A very small military force was placed in these fortifications, but gunners and master gunners were appointed to particular places *for life*. Soldiers they could scarcely be called, for they were not subject to military discipline, and so recently as the 24th January, 1783, the Establishment Warrant of the Ordnance reckoned the Master Gunners as part of its "civil" establishment. Abuses were the natural result of such a system, and therefore by a Royal warrant of 1682 Charles II. placed all the Gunners and Master Gunners under the Master General of the Ordnance, giving him authority to examine into their efficiency, and to turn out such as were unfit for service, notwithstanding they might hold Patent appointments from the Exchequer.[4]

16. The number and emoluments of each of these garrison

[1] The late Lord Herbert often remarked that Mr. Frost and a friend might have legalised all the preliminary drill of the Chartists in South Wales before the Newport outbreak.

[2] See the Parliament of 35 Hen. VIII. in the Earl of Devonshire's case, 11 Coke's Rep., 90 *a*.

[3] 3 Inst. ch. 22, p. 79; as to the functions of Ordnance as to Saltpetre, see vol. xviii. Rym. Fœd., pp. 915-18, vol. xix. ib., p. 603; as to Small Arms, vol. xix. ib., p. 309, 2 Com. Journ., p. 184.

[4] Historical Notes on the Ordnance, hastily collected on reading Mr. Burke's Bill for suppressing that board [1780].

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appointments were fixed by a War Office sign-manual Establishment 1683-4;[1] but at this date, and for many years after it, the only troops placed in garrison were invalid or unregimental companies, holding their appointments as retiring allowances. In case of emergency, the Governor was authorised by his Commission and required "from time to time to place or draw in such men and soldiers of the Company of the trained bands of the town [of Dartmouth] into the castle and blockhouse as he should see cause, for manning and defending the town and castle for His Majesty's Service."[2] These Military Governorships were, with few exceptions, abolished in pursuance of a recommendation of the Commons Committee of 1833; but in those that remain, viz., the Constable of the Tower of London and the Lord Warden of the Cinque Ports, the same scheme of defence is observed. The Constable is the Commander-in-Chief[3] of the Trained Bands of the adjacent hamlets of the Tower, acting under the authority of the 37th Geo. III. c. 25, and the Lord Warden is the Commander-in-Chief of all the Trained Bands within his jurisdiction, acting under the authority of his patent of appointment, which is recognised in all the Militia statutes.[4]

Garrisoned by invalids and trained bands.

17. From the date of the appropriation of supplies in William III.'s reign the expenditure upon defensive works has been undertaken by Parliament, and a series of special acts from the 7th Anne 26 to 55 Geo. III. c. 123, have been passed (as occasion required) to vest lands in the Board of Ordnance for the erection of fortifications at the public cost. *These* lands are held by the Secretary of State in trust for the Crown as representing public interests; but other lands and fortresses acquired by the Crown anterior to those acts are held by the Secretary of State as part of the Hereditary Revenue of the Crown. When the first-mentioned lands are sold the proceeds are paid to the Exchequer as extra receipts; but

Fortresses now provided for by parliamentary votes.

[1] See Report of cases of House of Commons (1746), vol. ii. of Reports, p. 101; and same of 1833 on Garrison appointments (650) p. 320.

[2] See Commission dated 11 Jan. 1714-15, of Nicholas Rope, Esq., to be Captain and Governor of the Castle-house of Dartmouth. War Office Comm. Report (1267), p. 31.

[3] 2 Com. Journ., pp. 257-8, 261-8, 271, 507, 665, 699, and 13 & 14 Car. II., c. 3, sec. 31.

[4] Opin. Bk. D., p. 419.

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when the other lands are sold (as the Hull citadel recently was sold) the proceeds are paid to the Office of Woods, as part of the Hereditary Revenue of the Crown.[1]

Prerogative power of the Crown relied upon till 1798.

18. Notwithstanding rebellion (in 1715 and 1745) and threats of invasion from the time of the Spanish Armada to the year 1797, no application had been made to Parliament to increase the powers of the Crown for the Defence of the Realm. All preparations prior to that year had been carried out (through the Lords Lieutenants of the various counties) under the ancient prerogative of the Crown.[2] On these powers and the readiness of Parliament to grant acts of indemnity, the Ministers of the Crown placed their reliance.

Rebellion of 1715.

Compensation for losses and Act of Indemnity.

19. In 1715,[3] for the safety of the fortress and town within the walls, a considerable portion of the property beyond the walls of the town of Berwick had to be destroyed. A meeting of the corporation and townspeople was held, attended by the Governor and Military Officer having charge of the defence.[4] The value of the property was discussed and sent to the Ordnance Office, and then the work of demolition commenced. It is well known that Parliament addressed the Throne for an account to be taken of all losses incurred by that rebellion.[5] The officers of the Exchequer assessed the damage at £5579 15*s.* 3*d.*,[6] which was provided for out of ways and means, and an act of indemnity was passed.[7]

20. The rebellion of 1745, and the preparations for the French invasion, were communicated to Parliament by message

[1] Opin. Bk. F., p. 267.

[2] See Instructions in Hen. VIII.'s reign, vol. iii. Cal. Dom. Pap. 45, and the proclamation of 1779, Ann. Reg., p. 362.

[3] There are several earlier Acts of Indemnity to which reference should perhaps be made. In the civil war, strange as it may seem to be, the Parliamentary officers and soldiers appear to have been troubled with actions and indictments in the civil and criminal courts. Application was made to Parliament, and an ordinance in 1647 was passed for their relief. (See 3 Parl. Hist., pp. 570, 581). 2 Com. Journ., pp. 390, 412, 568, 597, 693. The other instance was in William III.'s reign, see the 4 W. & M. c. 19. As to expediency of passing such Acts, see the question discussed in the House of Commons Committee on Ceylon (1850), vol. xii. of Parl. Pro., pp. 221-3.

[4] Ord. Order Book, pp. 248-257. [5] 18 Com. Journ., p. 229. [6] Pp. 494-5.

[7] 1 Geo. I. (sess. 2), c. 39.

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from the Throne, on the 19th December, announcing at the same time that the Crown had ordered six thousand Hessian troops into the kingdom, under a treaty of the June previous, which was laid upon the table of the House with the message.[1] Upon the address of thanks opposition arose, and beyond a vote of credit in the following May for 500,000*l.* "to enable His Majesty effectually to suppress the rebellion," and an Act to expedite the trial of offenders, little was done by Parliament.[2] Acts of indemnity were passed on this occasion to protect those engaged under the orders of the Crown in putting down the rebellion,[3] but no compensation for losses was granted except to the city of Glasgow.[4]

Rebellion of 1745. — Act of Indemnity.

21. Upon the threat of an invasion by France at the end of the last century no modern record of the necessary precautions appearing to exist, Mr. Pitt gave an instruction to Mr. Bruce to search all the records of the State Paper Office, and to prepare an account of the measures adopted by Queen Elizabeth on the descent of the Spanish Armada upon these shores. One copy of this Report—intituled "On the Arrangements which were made for the internal defence of these kingdoms when Spain, by its Armada, projected the invasion and conquest of England, and the application of these wise proceedings of our ancestors to the present crisis of public safety, dated 1798, and made to the Right Honourable Henry Dundas, by John Bruce,"—has been deposited in the British Museum, and will be found on a reference to the catalogue of the Grenville Library, No. 16,245, under the name of "Bruce." Either from recommendations contained in that Report, or in a MS. memoir by Lord Cornwallis of August, 1796, Mr. Pitt was induced to come to Parliament for additional powers first in 1798, and again in 1803.[5]

Threat of French Invasion in 1798 and 1803.

22. Until these Acts were passed the Crown had no general powers, in England or Scotland, though such had been long conceded by the Irish Parliament,[6] of taking any land for the defence of the realm on compulsory purchase. In

Mr. Pitt's Defence Acts.

[1] 25 Com. Journ., p. 25. [2] Pp. 151–238, 246. [3] 19 Geo. II., c. 20; ib., c. 29, s. 18.
[4] See the important debate on this grant, vol. xiv. Parl. Hist., pp. 497-538.
[5] 33 Parl. Hist., p. 1358; 38 Geo. III., c. 27.
[6] See Statutes 4 Geo. I., c. 7 & 21; Geo. II., c. 10, s. 5.

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this respect the Act may be looked upon as advantageous; but in the scheme which it embraced, of removing all those persons that could not remove themselves, and also of desolating the country by the destruction of all stock, provisions, &c., it was of doubtful expediency. The orders given under it, dated 3rd March, 1803, were addressed to the Lords Lieutenants of the several counties;[1] but the late Duke of Richmond clearly proved that this could not be carried out,[2] and subsequently they were modified by the Executive Government, so that horses, draft cattle, and wheel carriages *only* were to be removed or destroyed.

Two Principles: 1. Aid to the Crown. 2. Compensation to the subject.

23. But Mr. Pitt embodied two principles in these statutes, which must be kept in view, in considering the measures to be adopted to meet any similar emergency. First, that of implicit confidence and obedience to the orders of the executive Government, at the same time rendering to the Crown the use or disposal of all property that could be made available for the national defence; and, secondly, that of compensation out of the public treasury for all losses sustained by those only of His Majesty's subjects who should fulfil the obligation thrown upon them by the Act[3] for the public good.

Public Works.

Utilization or destruction on future invasion.

24. Regarding the vast amount of capital which, since the close of the French war, has been distributed throughout Great Britain in public works, as railways, gasworks, waterworks, and telegraphic communications, supplying artificially the wants of daily life, and the adoption of the principles of Mr. Pitt's measures for future legislation, it would not appear to be an unprofitable enquiry for the Government in time of peace to ascertain in what way these public works may be best utilized for defence or most cheaply destroyed. The cost of breaking up roads in 1803 was trifling (some, it is said, were broken up on the Eastern Coast); but the cost of the destruction of the several public works may be reckoned in amounts too gigantic to sum up on these pages.

[1] Parliamentary Papers of Feb. 1804 (No. 16).

[2] See Appendix II. As to the Duke of Marlborough's advice on invasion, see 11 Parl. Hist., pp. 942-966.

[3] Sec. 71 of 43 Geo. III. c. 9.

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Invasion, or the threat of it, come hereafter when and as it may, will bring its own urgent employment, and not be controlled as in former times by the chances of wind and weather. Steam has bridged over the Channel, and the passage of it may now be made, with certainty and speed previously unknown, to that point of our coast which the will of the General in command of the invading force may direct. On the emergency of an invasion, the acts of the executive are not only to direct, but to encourage the people; at such a season a matured experience should be available to prevent the possibility of a false step. If a feeble, uncertain, or misdirected course be prescribed, public confidence may be shaken, or even lost,—a greater evil than a second invading army.

Power to acquire land held by the War Department.

25. The present statutory powers of the Crown for the defence of the realm are to be found in the Defence Act, 1842, as amended by later statutes.[1] Land may be taken by compulsory purchase at any time; but, unless the enemy is upon the coast, the *form* of the previous sanction of the Treasury is needed.[2] A 'Return of the Property held by the War Office for Defence and Public Purposes in the United Kingdom' was laid before Parliament in June, 1862. *Obviously* these purchases ought *not* to be made as *investments*, though in a recent Report it was suggested that Parliament should sanction the purchase of about 10,500 acres by the War Department as "an addition to the National Domain"[3] to realize about 25,000*l.* per annum. Since the Crimean war, the estimates will show how readily Parliament *has* voted large sums for land purchases; and no contrast can be greater than that which is shown by the rejection, in 1786, of Mr. Pitt's scheme,[4] involving an expenditure of 760,000*l.* for the fortification of Portsmouth and Plymouth, and the adoption in 1860 of the Defence Commissioners' Report, involving an expenditure of 7,000,000*l.* sterling for a similar object. A National Domain, the surplus rent of which

[1] 18 & 19 Vic. c. 97, and 23 & 24 Vic. 112. [2] Sec. 23.

[3] Defence Report, 1860, par. 31.

[4] 41 Com. Journ., pp. 197-263, 772, 830; 25 Parl. Hist., p. 1096; 3 Hats. Prec., p. 204 *note*.

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amounts to 26,860*l.* per annum, held by a political officer, may be a doubtful advantage. Such a tenure has some of the evils incident to mortmain, and may be thought to infringe in *other* respects the rules of Public Policy.[1]

Defence Act, 1860.

26. These views were adopted by the late Lord Herbert in framing the Defence Act, 1860. Land sufficient for the construction of works, but no more, was to be purchased; the lands adjacent to the works were to be left in the hands of the owners for agricultural, but not for building, purposes. The financial result of his scheme, which was not a novelty upon the statute[2] book, but had never been practised before, has not been submitted to Parliament; though, the magnitude of the operation—the largest investment in land ever undertaken by the Government—and the probable saving of public money are considerations which might have induced some inquiry on the subject. From a War Office return made up to the 31st December, 1864, it appears that the number of acres taken *absolutely* under the Act, amounted to 5,536, and their cost to £671,896, averaging £119 an acre. The number of acres to be kept *clear*[3] to 6,484, and the cost of compensating the owners thereof, to £185,062, averaging £29 per acre.

Patents for Munitions of War.

27. In the earlier period of history, the Crown held the monopoly of warlike stores, and to secure all the saltpetre that could be produced in the realm, granted the exclusive right to search for it to the nominees of the Crown. These grants were saved from the operation of the 24 Jas. I., c. 3, by sec. 10 of that Act,[4] and they could not be put in force

[1] The actual rent is 28,592*l.*, derived from 14,160 acres of land, let to 431 tenants and to 1021 persons paying acknowledgments for small encroachments.

[2] 22 Geo. III c. 80, sec. 10 & 11; 24 ib. c. 29, sec. 13.

[3] It is to be remarked that no provision has ever been made to protect the lands adjacent to Government magazines—where a large amount of powder is either made or stored—from intrusion. An action at law for trespass is no protection, and preserving such places in disturbed times throws great labour, risk, and anxiety upon the officers in charge of them. The Government should have the power, by Order in Council, of declaring these portions of the public property as reserved from intrusion, and summary powers should be given to the officers in charge of them to apprehend and bring to punishment before a Justice any persons found thereon as trespassers.

[4] 12 Coke's Rep., p. 14.

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to prevent the importation of warlike stores.[1] In the reign of Jas. II., this importation was prohibited save under license from the Crown,[2] and patents for the *making or importing of gunpowder, arms, ammunition, or other utensils of war* (save for the immediate furnishing of the public stores of His Majesty), were prohibited under the penalty of a premunire. In later years this Statute was, however, little regarded, and was repealed by the Customs Act of 1826.[3] The grant of patents for such monopolies was attended with these evils to the public service:—it restricted the Crown from using the best method of defending the realm, while, at the same time, the patent was published to the world, and thereby gave to all Foreign Powers, not placed under any such restriction, the earliest knowledge and use of the invention. These consequences were laid before the Patent Law Commissioners in July, 1864,[4] and in the year 1865 the Court of Queen's Bench placed a construction upon patents which restored to the Crown the free use of every invention.[5]

28. The defence of the Colonial Empire does not lie within the scope of this work; but it may be observed that the possessions of the Crown for the Defence of each colony or settlement (India excepted), are vested by Acts of the Colonial Legislatures, not in the Colonial Governors, but in the Secretary of State for War, who holds possession thereof by the Commanding Royal Engineer, representing Imperial rather than Colonial interests. The Governor, though bearing the Queen's patent as Commander-in-Chief in the Colony, is restricted by the regulations[6] of the service from interference with Imperial troops. It might be contended that by these arrangements the Home Government admits that the responsibility of defending the Colonies rests upon the Mother country, and not upon the Colonists themselves.[7] However, Imperial expenditure for military purposes in the Colonies has become an open question since the late Sir W. Molesworth brought the subject before Parliament.

Defence of the Colonial Empire.

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[1] 16 Car. I., c. 21. [2] 1 Jas. II., c. 8. [3] 6 Geo. IV., c. 105.
[4] Report, 1865, pp. 145 to 161 of Evidence.
[5] Feathers v. the Queen, 6 B. & S., 257. [6] Queen's Regulations, 1868, par. 40-49.
[7] See Mr. Wildbore's letter to the Earl of Halifax, 7 Feb., 1765; W. O. Private Letter Bk., pp. 152-6; New Zealand Papers, 1863 [177], p. 16.

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## CHAPTER II.

### THE ARMY BEFORE THE COMMONWEALTH.

The reign of Charles I. the commencement of Army history.

1. THE Reign of Charles I.—as the period in English History during which the Army first gained influence, and ultimately such an ascendancy in the Realm as to destroy all the constituent parts of the Civil Government—is that at which this Chapter will commence. The "Army affairs," under which title their history would be readily traced in the Journals of the House of Commons, occupy so large a space in the transactions of this calamitous reign, that to follow out the subject would involve the General History, not only of the Army but of the great controversy between the Crown and Parliament, as to the Relative Powers which rightfully belong to each over this New and Unconstitutional Force, then first raised by the fears of each, until it remained as a terror to both the Crown and Parliament.

Division of the reign into two Periods—(1) Up to 1629; (2) from 1639.

2. The plan that it is proposed to adopt is this:—Dividing the reign into two periods—(1.) to the year 1629, (2.) from the year 1639,—to trace therein the Origin and subsequent History (so far as the latter can be embraced in a short narrative) of the most important features of Army Administration and Government, as matter introductory to the same subjects, when treated of in a later period, viz., after the Revolution of 1688.

First Period. A.D. 1625-29. General Duty imposed by law on all

3. When Charles I. ascended the Throne the law recognised the obligation of every citizen to bear arms, either in the County force or in the trained band of his Town or City. In addition to which obligation, the Military Tenures laid upon those who were land-

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owners more specific duties to aid the King in his wars, either with personal service or the means of subsisting an Army.[1] citizens to bear arms in defence of the Realm.

4. The attempt to keep in his pay any other body of armed men, save as a Guard for the Royal Person, was a violation of the law. In the first place the men were usually pressed into the King's service. In this period the division between land and sea service was not (as now) clearly defined. The soldier was put on board ship to fulfil the duty of a Marine, and, as men might lawfully be pressed[2] to "work" as Sailors, it appeared no great stretch of Prerogative to press men to fight the ship,—if attacked by the king's enemies,—as Soldiers. It was clear that the law did not justify the transportation[3] of pressed men,—that is the landing them upon the enemy's country; but once placed on Board Ship to be taken there, it required little persuasion to induce them to land, and upon land their gallant behaviour was insured by their National Character. Standing Army inconsistent with the Constitution. (1.) Pressing of men into the King's service.

5. This was, however, only one oppression felt by the people from raising an Army; others, not of it, had to suffer in their estate and person, inasmuch as necessity obliged the King to "billet" the soldiers on his Subjects, and to keep them in discipline by the exceptionable proceedings of "Martial Law." (2.) Billets. (3.) Martial Law.

6. The Government of the Army by Martial Law in James I.'s reign,[4] and during that of Charles I. is evidenced by the entries found in 'Rymer.' Towards the close of the year 1625, upon the return of part of the fleet from Spain, the Soldiers were warned by Royal Proclamation[5] not to depart from their Colours, as the King had other employment for them. It was inevitable that they would be billeted on the inhabitants of the district; and therefore, to keep the soldiers from outrages, a commission[6] addressed to twenty-five Commissions to execute Martial Law.

[1] See Letter from the Council, 11th Sept., 1640; 3 Rush. Coll., p. 1265, and Note A in Appendix.

[2] Broadfoot's Case, 18 How. Sta. Tri., p. 1324; Fost. Crown Law, p. 157; King *v.* Tubbs, Cowp. Rep., p. 515. [3] 2 Cok. Inst., p. 48; 2 Parl. Hist., p. 257.

[4] See Commission of 1624, in Appendix III.

[5] 15th Dec., 18 Rym. Fœd., p. 245. [6] 28 Dec., ib., p. 255.



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persons (including the Lord Marshal of the Army, Military Officers, Local gentry and Towns-people) was issued, to proceed within the district assigned (Devon and Cornwall, including Plymouth), according to the justice of Martial Law, against such soldiers *or other dissolute persons going with them, or any of them* committing any robberies, felonies, mutinies, or other outrages or misdemeanours, which by Martial Law should be punished by death, in such summary course and order as is agreeable to Martial Law, and as is usual in armies in time of war. The commission[1] directed the Commissioners to erect a gallows and gibbet in such places as the Commissioners should see fit, that the offenders might be executed as a warning to all. Peace officers had to give their assistance; for which proceedings the Commission was declared to be an ample warrant and authority.

Articles of War to define offences of soldiers.

Those of 1625.

7. What the "Justice of Martial Law" was is not apparent on the face of the Commission, and it is possible this omission was intended to be supplied by Articles of War put forth from time to time by the Crown for the Government of the Army. In 1625[2] such Articles appear to have been issued by the King on the advice of a Council of War. The offences were of a mixed character —in part civil and in part military—but all alike punishable by the Commanding officers, or the Marshal's Court. The "gibbet and strappadoe," as the instruments of punishment, were to be in every "market-place, for that the signs of such remembrancers will do good in a wicked mind." And, lastly, authority was given "to any three or more of the Commissioners to call a Marshal Court, and sit in Commission to hear, judge, and determine, any fact done by soldiers; but to have no power to put to death till they have advertised the *General* that shall *have authority of life and death for such troops as he shall command.*"[3]

8. The Army was disbanded in the year 1628,[4] and ordered to

[1] See a similar Commission for Southampton, pp. 262-3, and to Portsmouth for Mariners, pp. 750-51, 763. [2] See State Papers, Dom. Chas. I., vol. iii., No. 41.
[3] 1 Com. Journ., pp. 881, 892, 893; 3 Parl. Hist., Debates on "The Liberty of the Subject," and "The Petition of Right." [4] 19 Rym., pp. 4, 114.

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return to "their homes and honest vocations until His Majesty should have some further occasion to use their services." However, these Commissions[1] continued to be issued by the Crown, and the authority which they conferred was exercised so freely that the House of Commons first challenged the legality of, and then both Houses, by the Petition of Right, declared such proceedings, to be illegal.

These Commissions frequently issued by the Crown.

9. It must be noticed that these Commissions were issued and executed in the time of Peace; the powers conferred were to be used, not to support the discipline of the Army or Navy, but for the more speedy punishment of *any* crimes that might be committed by offenders, either in the Commission or Pay of the Crown, *or by Civilians associated with them.* The argument[2] against the legality of these commissions rested upon this principle,—that *in the time of peace* the civil magistrate had cognizance of *all* offences committed against the public peace, and that the Civil population ought not—whatever rule should be applied to the Soldiers—to be subjected to Martial Law. The status of an offender was at that time a doubtful security upon which to rest his life or liberty, and therefore the Petition of Right[3] made no distinction between the Civil and Military population, but declared these Commissions of Martial Law against *any* person whatsoever to be wholly and directly contrary to the laws and statutes of the realm.

Declared illegal by the Petition of Right.

10. The other great grievance brought to notice, and sought to be remedied by the same measure, was that of Billeting troops. The subject was first brought before the House upon a levy of money sought to be made at Gatton[4] in Surrey, and, in default of payment, soldiers were to be billeted. It next came before the Commons upon a complaint from Taunton,[5] the suggestion being made that the

Billets. Grievances inquired into by the Commons.

[1] On Foreign Service, ib., pp. 776-80, 789; at the outports, ib., pp. 804, 940, 946, 952, 960.

[2] 3 Rush. Coll., p. 76.

[3] Appendix IV.

[4] 1 Com Journ., pp. 875, 876, 879, 880, 881.

[5] Ib., pp. 886, 898, 902.



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soldiers had been imposed on the inhabitants because the politics of their Parliamentary Members did not suit the opinions of those who imposed the billets. Both cases were investigated by the Commons, and a Petition was at once presented by the Speaker to the King, "to remove this intolerable burden."[1] "By the fundamental laws of this Realm," were the words of this petition, "every freeman hath, and of right ought to have, a full and absolute property in his goods and estate; and that therefore the billeting and placing soldiers in the house of any such freeman against his will, is directly contrary to the said laws, under which we and our ancestors have been so long and happily governed; yet, in apparent violation of the said ancient and undoubted right of all your Majesty's loyal subjects of this your kingdom in general, and to the grievous and insupportable vexation and detriment of many counties and persons in particular, a new and almost unheard-of way hath been invented and put in practice, to lay soldiers upon them, scattered in companies here and there, even in the heart and bowels of this kingdom; and to compel many of your Majesty's subjects to receive and lodge them in their own houses, and both themselves and others to contribute towards the maintenance of them, to the exceeding great disservice of your Majesty, the general terror of all, and utter undoing of many of your people."

A.D. 1628. Petitioned against by House of Commons.

11. The question was not, however, permitted to rest upon the action of the Commons alone, for both Houses made this representation upon the Petition of Right:[2] —"And whereas of late great companies of soldiers and mariners have been dispersed into divers counties of the Realm, and the inhabitants, against their wills, have been compelled to receive them into their houses, and there to suffer them to sojourn, against the laws and customs of this realm, and to the great grievance and vexation of the people. They do, therefore, humbly pray your Most Excellent Majesty that your Majesty will be pleased to remove the said soldiers and mariners; and that your people may not be so burdened in time to come."

Declared illegal by the Petition of Right.

[1] 2 Parl. Hist., p. 283.

[2] Petition of Right, ib., p. 375.

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12. Accepting the Petition of Right as a fundamental law, it was impossible for the Crown, without wholly disregarding it, to maintain a Standing Army within the realm without the sanction of Parliament. When, therefore, an Army was to be raised in the North of England to meet the alleged invasion of the Scots, Parliament was called together. Even at this early period in the History of a Standing Army, it was necessary to put forward some pretext for raising it, and that which Charles I. resorted to at the original establishment of the Army has, at later periods, been used with equal success, to justify its continuance. The second Period from A.D. 1639.

13. This pretext is thus noticed by Rapin:—"But as the English might naturally ask by what reason were they bound to venture their lives in defence of the interests of the King of Scotland, he (Charles I.) thought this objection should be obviated by supposing the Scots to have already levied an army *for the invasion* of England. From hence he inferred it was incumbent upon him to provide for the *Defence* of the Kingdom by raising sufficient forces to repel the attacks of his enemies. There was little probability that the Scots should think of invading England, if *they* were left unmolested; but *it was necessary to excite the English with the dread of an imaginary danger.* Pretext for the Establishment of the Army.

14. The manner in which this force was raised was one of the first violations of the law. The King in the absence of subsidies, had no constitutional method of raising money for levy or a soldier's kit, and therefore he had recourse to Coat and Conduct money—an old contrivance of Elizabeth's reign.[1] An Assessment was laid on Counties and divisions, to raise through the Lieutenancy a given number of men. The expenses of levy—as 1*s.* to each man, and 14*s.* for his coat, with a fee to the constable as the "bringer," and the cost of his journey—called "Coat and Conduct money," which were originally treated as a loan to the Crown, had in Charles I.'s reign become an illegal exaction, enforced by orders[2] from Coat and Conduct Money.

[1] 2 Parl. Hist., pp. 542, 642, 655, 660.

[2] See such an Order, 3 Rush., pp. 1179, 1266.

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the Council—for the arrest and imprisonment of the "principal and ablest men of the county who should refuse to pay it."

15. In the schedule of grievances (April, 1640) it was noticed "as this new tax, with undue means used to enforce the same, by messengers from the Council Table," and the Commons took up the subject by referring it for investigation[1] to the Committee on grievances. In the Petition subsequently presented to the King at York, it was represented as a grievance, and by the Grand Remonstrance (1641) declared illegal.[2]

King's Troops armed out of the Militia Armouries.

16. But, having raised the troops, the next difficulty that presented itself was "arming" them. To insure a supply of arms to the Ordnance Department, and to secure the arms of the Militia being kept in good order, a Royal Commission[3] had been issued in 1631, to several Armourers, Gun and Bandalier Makers to furnish the Crown with a small annual supply of arms, and to inspect and repair the arms of the County Militia. The bulk of the arms in the kingdom at that time belonged rather to the Militia than to the King, and it served a double purpose equally useful to him to take away arms from the Militia as the National force, and to confer them on his own Army. This did not, however, escape the notice of Parliament, for in the Grand Remonstrance[4] (par. 23), and in their proposals (Mar., 1643)[5] to the King, they first protested against the injustice, and then stipulated for the return of the arms to the Militia.

Martial Law by Commission to the General, and Articles of War.

17. The Army when raised could not be legally governed under any Prerogative system of Martial law, though its establishment in the Northern Army is clearly seen from the documents[6] extant. The Commander-in-Chief of that expedition had authority given him, by the express terms of his Commission from the Crown, to execute Martial law upon two classes of His Majesty's subjects. For the warning of all probable offenders, and the guidance of officers serving in the expedition, the Commander-in-Chief

[1] 2 Com. Journ., pp. 50, 58, 1466, 624.
[2] See Forster's 'Debate on the Grand Remonstrance,' pp. 225, 257.
[3] 29 June, 18 Rym. Fœd., p. 309. [4] 4 Rush., p. 441. [5] 5 ib., p. 197.
[6] See the same in Appendices V., VI.

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put forth Articles of War, printed at Newcastle (1639), which may be considered as the foundation of the present Military Code. They provide for the Administration of Justice through the "Council of War" and the "Advocate of the Army," and that the proceedings in Courts Martial shall be truly and fairly recorded. The Provost Marshal is recognised as the executioner, and the supreme control is vested in the "Lord General."

18. The illegality of these powers, if executed in time of peace, came under the notice of the Council Board in July, 1640, and the Lawyers and Judges were all of opinion "that martial law could not be executed in England but when an enemy is really near to an army of the King's." The letter of Lord Conway leaves no doubt of this fact.[1]

Judges, &c., declared in Council the execution of Martial Law to be illegal.

19. It was essential that some discipline should be established, and this fact became obvious to Parliament when the House of Commons accepted the responsibility of providing for the King's army[2] by referring the state of it to a Committee[3] of their own House, with power to send for the lists of the Army, and any persons that might conduce to the business. The Earl Marshal's Court also became a subject of inquiry,[4] and was declared a grievance. To provide a remedy the Commons proposed that the Treasurer (of the Wars) should move His Majesty—for the disciplining of the Army—to issue a commission of oyer and terminer[5] directed to the officers in the field, and some gentlemen of the country for the trial of members of the King's Army *in pay*. This proposal appears to have been submitted to the King, and to the General in command; for upon a subsequent entry it is shewn that both Houses were invited to a free conference on a plan[6] *to settle the discipline of the Army as might not weaken the Petition of Right.*

Proposal for, but no Commission of Oyer and Terminer was issued.

20. The result of the conference on Martial Law is not recorded; but at a conference upon the disbandment of the Army, the Lords urged that the Honour and Safety of the State required that the Lord General

Proposal of the Lords to grant the General a Commission

[1] Appendix VII. [2] 4 Rush., p. 448, par. 149. [3] 2 Com. Journ., p. 34.
[4] 3 ib., p. 89. [5] 2 ib., p. 70. [6] Ib., p. 104.

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of Martial Law not agreed to by the Commons.

should have power given him to exercise Martial Law to punish the disorders of soldiers, "for that there was such a belief amongst the soldiers for want of Martial Law that the General would be more fearful to execute Martial Law upon them than the soldiers to be in disorder;" and they reported that the General said "if Parliament would allow such a commission he would take care to use it with discretion and moderation as should be fit, and but temporary. If Parliament allowed him *no* such commission he could *not be* answerable for what mischief might happen, or disorder that might ensue."[1] The Commons were not, however, prepared to do more than to ask His Majesty to send down a Proclamation that those who should disobey the Lord General,[2] or disobey their officers in disbanding the Army, should be punished severely as in contempt of the power of the King and Parliament.

21. It was not for a much longer period that the Parliament could withhold the grant of these powers; for under an order from both Houses dated the 8th September, 1642, those Articles which are known as the Articles of War of the Earl of Essex were issued for the better conduct of the Army, and remained in force in the Parliamentary Army throughout the period of the Rebellion.[3]

A.D. 1642.

Articles of War issued with the authority of Parliament.

22. Independently of these elements of strife, a Third Power in the Realm, such as the Army, arising at the will of the Crown in the midst of the Civil Community, could not fail to become an object of suspicion to the people as represented in Parliament. Hitherto they had protected themselves either as Sailors or Militia, the great deeds of English history having been wrought out by the Yeomen of England before the necessity of a Standing Army had ever been thought of.

Raising up a Third Power in the State—the Army—the cause of strife.

23. So far as the Land Forces were needed, upon alarm all the Fortresses of the kingdom had been manned by the Militia.[4] When for the first time Soldiers of the King's

Militia, and not the King's Army, garri-

[1] 2 Com. Journ., p. 188.

[2] Ib, p. 189.

[3] See Appendix VIII.; they are printed in extenso, p. 130 of Appendix to Report on Military Punishment, 1836.

[4] See the Order of May, 1640, for the Hamlet men to enter and guard the Tower of London, 3 Rush., p. 1179; and 13 & 14 Car. II., c. 3, sec. 31.

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Army, instead of the "Hamlet" men, were placed in the Tower of London, the people petitioned Parliament, and both Houses thought themselves betrayed. An examination of the Lieutenant of the Tower, as to this exceptional proceeding, was at once taken, and an assurance obtained from him that no guard should come into the Tower save of the Hamlet men.[1] In after years, when the troops were admitted to the Tower they went there under an old established rule,—by the order of a Parliamentary Minister, the Secretary at War,[2] and not of a Military Officer, or the Commander-in-Chief.

son the Fortresses.

24. It was impossible for Parliament to remain neutral,—to leave the Army wholly to the control of the King; for whether raised to restrain the impertinence[3] of Parliament or not, it is clear that the King might, as Cromwell did, use it for the purposes of coercion.

Parliament could not remain neutral.

25. As holders of the Public Purse, it was unfortunate that the Commons should have opened a direct communication with the Army.[4] By withdrawing power from the Crown it became not transferred, but altogether lost to the Commons, in their subsequent controversy with the Army. They were moved, first by fear of public disaster or private injury, and then,—as a consequence of their position, and in the hope of saving the people and themselves from these evils, upon any demand made by the Army, they acquiesced in a lavish expenditure of public money. As the power and authority of the Crown at any time becomes weakened or destroyed, that of an Armed force over the Commons as an Elective Assembly must, in a less or greater degree, prevail, and the result of any direct or actual contest between Powers so unequal must inevitably be the same as that which the history of the Commonwealth records of the contest between the Army and the Parliament of England.

Commons open a direct communication with the Army.

And were destroyed by the Army.

26. As the raising of the supplies rested with the Commons, they originated at this period the principle of their appropriation. Instead of paying the subsidy to the

Supplies raised on estimate and appropriated.

[1] 4 Rush., pp. 249, 250.

[2] Report on Army and Ordnance Expenditure, 1850, p. 98, quest. 1202.

[3] See "The Proposition for His Majesty's Government," 1 Rush. (Appendix) p. 12, and Rapin's observations, Vol. viii., p. 313. [4] 2 Com. Journ., pp. 133, 134.

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King they directed the payment to a member of their own House, as Treasurer of the Wars,[1] and gave directions by their Resolutions as to the persons and purposes to and for which it should be paid.[2] The system of estimate followed from these arrangements; that of the 27th July, 1641, for the disbandment of the Army, being one of the earliest in date that was submitted to the House of Commons.[3]

On disbanding Army the grant of half-pay originated.

27. In this disbandment of the forces the earliest traces of the Half-pay system are to be discovered, officers styled "Reformadoes" being mentioned on the Commons' Journals. That House, as in William III.'s reign, watched the growth of the half-pay list. The first entry under date of the 30th November, 1640, is to strike off such officers from Lord Crauford's troop, as an "unnecessary charge,[4] and fit to be spared." Then some, who petitioned the House, were paid for one month;[5] their case was ultimately referred to a Committee for consideration, and a list of half-pay or reformado officers submitted to the House by Sir John Hotham.[6]

Army raised for Ireland under an Impressment Act.

28. The Commons, having disbanded[7] the King's Northern Army, were not long before they attempted to raise another Army under the authority of Parliament. With this object, and to lay down in the preamble a rule that has been accepted as the constitutional rule upon the subject, the 16 Car. I., c. 28, was passed. Reciting the substance of earlier enactments, the preamble declared that by the laws of the realm none of His Majesty's subjects ought to be impressed or compelled to go out of his county to serve as a soldier in the wars, except in case of necessity of the sudden coming in of strange enemies into the kingdom, or except they be otherwise bound by the

Preamble lays down the Constitutional Rule as to Impressment.

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[1] Sir William Uvedale, M.P. for Petersfield, 2 Com. Journ., pp. 338, 355, 582.

[2] 2 Com. Journ., pp. 40, 43, 50, 53, 62, 82, 97, 110, 126, 146, 150, 155, 160, 173, 202, 218.

[3] 2 Com. Journ., p. 226; and see the following entries:—pp. 177, 230, 270, 336, 353, 457, 502 (for troops in Ireland, p. 677).

[4] 2 Com. Journ., p. 40. [5] Ib., p. 130. [6] Ib., pp. 180, 237, 270.

[7] 16 Car. I., c. 9.

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tenure of their lands or possessions, and the Act authorised the Justices of the Peace for a defined period, to impress so many men "for soldiers, gunners, and chirurgions" as should be appointed by the King and Parliament. The levy, coat and conduct moneys, with such wages and entertainment until the impressed men entered into pay, were to be paid according to the scale allowed by the King and Parliament. Each person, between eighteen and sixty years of age, refusing to be impressed was to pay a fine of 10*l.* to the county treasurer, for the relief of maimed soldiers, gunners, and chirurgions, or to be committed to prison. Certain exemptions were granted by the Act as to men of the Train Bands, or to persons rated to a subsidy, or to the eldest sons of persons rated for that purpose, at 3*l.* lands or 5*l.* goods, or to persons having the rank of an esquire, or a higher rank. The service for which the impressment was put in force being the war in Ireland.

Provisions of the Act.

Exemptions granted.

29. But in a short interval of time the two Houses of Parliament, without any authority from the Crown, though ostensibly for its defence, undertook to raise an Army in England under their own authority. To govern such a force when raised it was essential to declare themselves perpetual, not liable to dissolution by royal proclamation;[1] but with this authority granted to them, the Houses had then to seek further powers from the King for Command[2]—for obtaining the possession of the Ordnance[3] in the Tower,—for raising men as soldiers,[4] and—failing to obtain these powers lawfully—to usurp the functions of Sovereignty, and thus to taint all their acts with illegality.

Army raised for England by the authority of the two Houses.

30. To trace the Formation of this Army through all the stages of controversy to which it gave rise would, for the purposes of this Work, be useless; but one point—arising on the promotion of officers—may be noticed. In the

As to the formation of it.

[1] 2 Com. Journ., pp. 136, 140; 16 Car. I., c. 7; Vol. iii., p. 67, 'Cromwell's Letters,' by Carlyle.
[2] 2 Com. Journ., p. 263.
[3] 4 ib., pp. 306, 361.
[4] Ib., pp. 308, 548.

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Ordinance under which the Army was to be raised and governed the House of Lords had inserted a proviso,[1] "That all Colonels, Lieut.-Colonels, Serjeant-Majors, and Captains that shall be employed in this Army may be such as shall be nominated, appointed, and approved of by both Houses of Parliament;" on which the House of Commons made this amendment:—"That the Commander-in-Chief nominated in this ordinance shall have power to nominate all Colonels, Lieut.-Colonels, Serjeant-Majors, and all Captains, out of any of the forces under the command of the Parliament, to be approved of by both Houses of Parliament," offering these reasons in favour of it:—"They do conceive that, by giving of this power to the Commander-in-Chief to nominate his officers, he will more oblige his officers, and better enable them to carry on the work. They do conceive there can be no inconveniency in giving him this power of nominating, in regard that both Houses are to approve of the officers nominated by the Commander-in-Chief. And they do observe, that the power of nominating officers is no unusual or extraordinary power; for this power of nominating is granted constantly and usually to every Commander-in-Chief."

A.D. 1644. Controversy between two Houses of Parliament.

31. Upon one other fact—by no means unimportant with reference to Army Administration—all historians are agreed, viz., that the men who held Commissions as Officers were of a lower social scale than ever either before or after that period held Commissions in any English Army, and that, as a consequence, their own necessities, arising from poverty, obliged them to oppose Parliament in all endeavours to disband them.[2] "There were in the Army," wrote Rapin,[3] "many Officers who before the wars had been only Tradesmen, and saw with regret that they were going to be reduced,—to quit their employ which gave them authority. These men were ready *for any undertaking*,[4] not to be obliged

Low social condition of the officers, and its results.

[1] 3 Parl. Hist., p. 341.

[2] 3 Ib., pp. 583, 585, 604; 5 Com. Journ., pp. 176, 181, 183, 192, 194, 197, 247, 249.

[3] Vol. x. p. 370.

[4] Of this army it will be remembered that Cornet Joyce, who seized the King at Holmby, had been a tailor, and that Colonel Pride, who drove the Speaker from his Chair, had been a butcher.

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to alter a course of life they had now led for many years." The Army therefore was Professional or Mercenary, for the System of Purchase, though not unknown, was excluded, and men of low type entered the Army from no higher motive than self-aggrandisement.[1]

Officers of the Royal Army men of higher status.

32. The *Officers* of the Royal Army *could*, and in fact as the preamble and the provisions of the 16 Car. I., c. 13,[2] plainly prove, *did forbear* their claims to pay on their disbandment; but the Parliament had sought the services of men whose need was such that they were wholly dependent upon the public subsidies, or the free quarters of their fellow-citizens. Their claims were as imperative as their necessity, and—united in a common cause in which Officers and Men, as springing from an equal status, were alike interested—the Army was irresistible.[3]

Strength of the army may be developed at any time.

33. The same political or physical strength may at any time be developed in the Army against a weak Executive Government; but our National experience shews that security is to be found, so far as human foresight can give it against such an evil, in the constitutional arrangements that followed upon the Revolution of 1688. Since that period the Army has been Officered by gentlemen, and the relation in which the Army *should* stand towards the Crown, —Parliament, the Civil institutions, and—above all—towards the Treasury, has been defined by the Statesmen, and accepted *hitherto* by the Army of a Constitutional Sovereign.

To disturb the Constitutional Safeguards of 1688 unwise.

34. To disturb such arrangements by weakening or destroying *any* constitutional safeguard—originally raised for the protection of the community—by altering in any degree the relative powers of Parliament or the Crown towards the Army, by removing the constitutional control of the Secretary of State, or the financial control of the departments in whose hands the Civil Administration of the Army has been placed, giving the Army readier access to the Public Treasure, would be to increase the power of the Army, and, may be, to lead back to, or at least towards, that state of Anarchy in

[1] 2 Com. Journ., pp. 438, 444.

[2] Vol. v. Stat. Realm, p. 114.

[3] See 5 Com. Journ., pp. 215, 217, 230, 232; compare with p. 268.

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which, after the destruction of the Sovereign and Parliament, Freedom was lost, and Military Power here—as at times and in other places it has too often done—reigned Supreme.

Civil Administration of the Army to be maintained in its integrity.

35. At the period now under consideration, the Personal claims were the advent to the Political claims of the Army; and at any time the *first* indication of the action of the Military against the Civil institutions of the Country will be directed towards that Civil department of the State charged with the duties of finance and control over the Army. No statesman, judging the Signs of the Times, can have failed to notice or to draw his own conclusions from the fact, that in recent years—since the Crimean War—an influence or current has set in against the Civil Administration of the Army. Expense has largely increased, and hence it may lead some to investigate the question whether, as the late Duke of Wellington suggested as the truth, there is any and what connection between independent (civil) control and economy, or class (military) control and a lavish expenditure. Since the year 1855 the subject of Army Administration has been open to criticism, and one purpose for which these pages are written is to give such—and to refer in the Notes to other —information as may be useful to those desirous of examining the Subject for themselves.

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# CHAPTER III.

## THE ESTABLISHMENT OF THE MILITIA.[1]

The Militia the Constitutional Force.

Early statutes.

A.D. 1285.

A.D. 1306.

1. THE Constitutional Force for the Defence of the realm is the Militia. By an early statute every freeman between the ages of fifteen and sixty years was obliged to be provided with armour to preserve the peace; but he was protected from leaving his county or shire, "save upon the coming of strange enemies into the realm."[2] By the 5 Hen. IV., c. 3,[3] provision was made that a watch should be kept upon the coast, to preserve the Realm from their approach without due warning.[4]

2. Other statutes[5] secured the Subject from the exactions of the Crown in regard to these or other supposed military obligations, until in the reign of Philip and Mary all the previous statutes concerning the finding of horses and arms were repealed, and the law consolidated. The 4th Philip and Mary, c. 2, imposed upon the owners of land, according to their estates, an obligation of finding, keeping, and sustaining within the realm of England, horses and armour for the defence of it.[6]

3. From the year 1324 to 1557, the Military forces were arrayed and mustered under commissions from the Crown[7]

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[1] This word originated with the controversy which the force itself—namely, the Trained Bands—gave rise to. The first entry in the Commons Journal in which the word is used, is under date of 31st of Jan., 1841. (See vol. ii. pp. 316 and 406). "I do heartily wish," said Whitlock, addressing the Commons, on 1st March 1641, "that this great word—this new word—the Militia—this harsh word, might never have come within these walls."—4 Rush., Coll., p. 525.

[2] 13 Edw. I., c. 6; 1 Stat. Realm, p. 97.

[3] Arts. of Enquiry, 34 Edw. I., ib. p. 246.

[4] Ib., vol. ii. p. 144.

[5] For the statutes of an early date relating to the Militia as distinct from hired soldiers, see Appendix, Notes B and C.

[6] Sec. 15.

[7] Hale's Hist. of Com. Law, p. 543.

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directed to two or more[1] persons of honour, reputation, and estate in each particular county; but until the 3rd and 4th Edw. VI. was passed, the statute law was silent, so far as the language of express enactment was the criterion of intention, as to the officer by whom these forces were to be commanded.

Commissions of Array.

4. That Act, which was in the nature of a Riot Act—and upon the basis of which the present Riot Act—1 Geo. I. s. 2, c. 5—appears to have been passed[2]—after providing for the punishment of unlawful assemblies and rising of the King's subjects, gave to the Lieutenant of the Crown express authority in these terms:—

The appointment of Lords-Lieutenant by Crown sanctioned by 3 & 4 Edw. VI. c. 5.

"That if the King by his letters patent shall make any lieutenant in any county or counties of this realm for the suppressing of any commotion, rebellion, or unlawful assembly, that they as well all justices of peace of every such county, and the sheriff of the same, as all mayors, bailiffs, and other head officers, and all inhabitants subject of any county, city, borough, or town corporate, within every such county, shall, upon the declaration of the said letters patent and request made, be bound to give attendance upon the same lieutenant to suppress any commotion, rebellion, or unlawful assembly, unless he or they being so required have any reasonable excuse for his not attendance, upon pain of imprisonment for one whole year."

5. This act, though repealed by the 1 Mary, stat. 2, c. 12, was re-enacted by the 1st Eliz., c. 16, and continued in force throughout her reign, when it was suffered to expire. The authority of the Lieutenant was therefore recognised as a legal authority by Her subjects; and at the time of the Spanish Armada, and in later times upon any threat of invasion, all arrangements for the internal defence of the country were and have been made through the agency of these Officers.

Act repealed by 1 Mary, but re-enacted by 1 Elizabeth, c. 16, and then lapsed.

[1] See Commissions of Chas. I., appointing the Earl of Dorset and Earl of Holland for Middlesex; and the Earl of Arundel, Earl of Nottingham, and Lord Maltravers, for Surrey.—3 Rush, p. 1175. It was decided by the Long Parliament to have only one Lord Lieutenant, except in London, where are still many Commissioners of Lieutenancy.—2 Com. Journ., pp. 423-4.

[2] Vol. iv. pp. 1, 104.

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6. Unfortunately (as it may appear), the act of Philip and Mary was repealed in the reign of James I.,[1] whereby, as the opponents of King Charles I. in the Long Parliament contended, all the earlier statute law was revived and brought into operation. The King had therefore no Statutory authority for appointing and arraying the people in arms under the Lords Lieutenants. Whatever the objection was worth, it is certain that the Parliament of Charles II. so far regarded it as to give an express statutory indemnity[2] to those Lieutenants who had received and acted under Royal Commissions from that Sovereign before the declaratory act of 13 Car. II. c. 6 was passed.

Early statutes revived and the statutory powers for appointment of Lords Lieutenant lost.

7. To terminate all future controversy upon a question of such vital importance, the House of Commons after the Restoration proceeded, by one of the earliest acts passed after its election to establish and settle the Militia of the kingdom upon a constitutional basis.[3] Time would not allow of a complete settlement of all the details of such a measure, and therefore a short Act was passed for these principal purposes:[4]—1. That of declaring, by its preamble, the sole supreme command of all Military Forces to be in the Crown; 2. That of indemnifying persons acting under Royal Commissions of Lieutenancy; and 3rd. That of declaring the Crown to have no power of transporting any subjects, or in any way of compelling them to march *out* of the kingdom otherwise than by the laws of England ought to be done.

Power of the Crown over the Militia established in Charles II.'s reign.

8. This Act was soon followed by another passed in the same session; and the basis upon which the Militia was ultimately settled in this reign, and upon which indeed it rested (save as to the cost of its maintenance) until the year 1757,[5] may be thus briefly stated.

Outline of the Militia Establishment till reign of Geo. II.

9. The legislature in the first and second of the three

[1] 1 Jas. I., c. 25, sec. 7.
[2] See 13 Car. II., c. 6, sec. 2, and 15 Car. II., c. 4, sec. 15.
[3] 8 Com. Journ., pp. 324-6, 343-7-9, 373-6-8, 419, 431-3.
[4] 13 Car. II., c. 6; 5 Hist. Stat. Realm, p. 309.
[5] 13 Car. II., c. 6; 14 Car. II., c. 3; 15 Car. II., c. 24.



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statutes by which the Militia was settled, laid down in the preambles the great constitutional doctrine which these words embody: — "Forasmuch as within all His Majesty's realms and dominions, the *sole* supreme *government*, *command*, and *disposition* of the militia, and of all forces by sea and land, and of all forts and places of strength, is, and by the laws of England ever was, the undoubted right of His Majesty and his royal predecessors, Kings and Queens of England; and that both or either of the Houses of Parliament cannot nor ought to pretend to the *same*, nor can nor lawfully may raise or levy any war, offensive or defensive, against His Majesty, his heirs or lawful successors; and yet the contrary thereof hath of late years been practised, almost to the ruin and destruction of this kingdom; and during the late usurped Governments many evil and rebellious principles have been instilled into the minds of the people of this kingdom, which, unless prevented, may break forth to the disturbance of the peace and quiet thereof."

Declaration of the Prerogative of the Crown.

10. It then placed the Militia of each County under the Government and Command of a Lieutenant to be appointed by the Crown,[1] and gave to him the appointment of Deputies and of all Officers, with a power reserved to the Crown of commissioning or of displacing them at any time. The force, though strictly local, could be led to any county for the suppression and defeat of insurrection, rebellion or invasion. It was to consist of horse and foot soldiers, provided by or at the expense of the owners of property—not of land exclusively—in the proportions set out in the Act. Its numbers, as dependent upon the wealth of the inhabitants, were undefined, nor does it appear from the Commons' Journals that any exact estimate of the probable number that would be available under these statutes was ever laid before Parliament.[2]

Militia of each county placed under Lords-Lieutenant.

Cavalry and infantry.

Numbers indefinite.

11. The pay of the soldier was fixed by statute, and when the soldier was called out *for actual service* had to be provided for one month in hand, by his master or pro-

Pay fixed by statute.

[1] Blank forms 1662, July 6, vol. lvii. Cat. of State Papers Chas. II., p. 430.

[2] In the Debate of 15 Mar. 1688-9, the number of the Militia is spoken of as 150,000 men, 5 Parl. Hist., p. 181.

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vider, but to be recouped to him out of the King's public treasury or revenue, and until so recouped no further charge could be legally made by the Crown for Militia service.[1] The pay earned, and the ammunition used during the fourteen days' annual muster or exercise, was borne by the master or provider, and not by the Crown.[2]

Expense of it how borne.

12. The arms to be provided were specified and described, but by an Act of the next reign the Lieutenants and their deputies had power to direct the length and size of the infantry soldier's musket.[3] If arms were lost in service, there was no obligation imposed on the subject to replace them until the expiration of a year.

Arms, what and how provided.

13. The County was charged with making provision for a fund afterwards known as "trophy money,"[4] which was to be appropriated to ammunition and other "necessaries," and afterwards, as the Lieutenant should see fit, to the Inferior Officers employed on the force for their pains and encouragement.

Trophy Money.

14. All the offences of soldiers were to be punished by the *civil* magistrate: the power to make Articles of War being advisedly excluded from the Act. The officers had, however, power to inflict pecuniary mulcts, and upon default of payment to imprison—a feeble punishment for the crime of desertion or neglect to attend Military duty.

Its offences punished by the Civil Magistrate.

15. One of the great objects which Parliament had in view being to organize, under lawful authority proceeding from the Crown, all men trained and arrayed in the use of arms, a direct prohibition was laid down in the 14 Car. II. against the continuance of Train Bands beyond the 25th March, 1663;[5] the Train Bands of the city of London and their auxiliaries only excepted.

Trained Bands (except those of London) to be discontinued.

16. The Lieutenant of the Crown[6] thus became, with the

[1] 1 Geo. I., st. ii. c. 14. 9 Geo. I., c. 8, sec. 7. 7 Geo. II., c. 23.

[2] 9 Geo. I., c. 8, sec. 7. [3] 1 Geo. I. & II., c. 14. [4] Parl. Hist., p. 54.

[5] Sec. 20 & 27, and see note N, on the Honourable Artillery Company of London.

[6] Some confusion arises as to the nature of the office of a Lord-Lieutenant, by reason of the same person usually, but not necessarily, holding the highest civil office in his county—that of Custos Rotulorum—in respect of which office he is a Justice of the Peace and quorum. Probably this confusion was in the mind of the compiler of the regulations for the discipline of the army, as Her Majesty's Lieutenant is *not*, though the Lord Warden of the Cinque Ports—a co-ordinate authority—*is* entitled to the courtesy of a salute from the troops. (Edition 1868, par. 119 et seqq.)



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sanction of Parliament, a Military Officer of the highest rank within his County;[1] and, for better securing the peace of the kingdom, he had entrusted to him the power of ordering a search (to be executed by the joint agency of a Commissioned Officer and a Civil Constable) for, and of seizing arms as were in the possession of persons whom he judged to be dangerous to the peace of the kingdom.

Lord-Lieutenant thus constituted a military officer of the highest local rank.

17. Such was the basis on which the militia force was placed by the legislature in Charles II.'s reign for the security of the people from military oppression on the one hand, and from foreign enemies on the other. During the time these acts were in operation many attempts were made to frighten the civil community, as represented in Parliament, into mistrust of the militia; but the Parliament ever withstood alarm, and evidenced its confidence in the militia by readily increasing its strength.

Militia so constituted enjoyed public confidence.

18. In examining the history of the Militia and of the Standing Army during the reigns of Charles II. and James II., it will be seen that Parliament reposed its confidence in the Militia when it declared its mistrust of the Standing Army. The reason for this difference of feeling towards the two forces is apparent. The militia was under the immediate influence of the English aristocracy, and made up of men having other means of subsistence than their pay. The officers were not courtiers, and they owed their allegiance rather to the institutions of the country in Church and State, as established, than to the *King* seeking to overthrow them. The Militia was so far beyond the control of the Crown that its numbers could not be reduced by it,[2] nor could the influence of the Crown be exercised except through the Lords or Deputy Lieutenants, or in abrogation of their statutory rights. With regard to the Army, the case was the converse to that of the militia. Its existence was wholly dependent on the

Militia trusted and standing army *mis*-trusted by Parliament.

[1] 4 Black. Com., p. 272.

[2] Attorney General's Opinions, Bk. 722, p. 41; 33 Parl. Hist., p. 1494; Sloane *v.* Pawlett, 8 Modern Rep., p. 19; Gerard's case, 2 W. Black. Rep., p. 23.

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pleasure of the Crown, whose Subjects would have been pleased by reduction. The promotion of the officers and men rested exclusively in the breast of the King. Their pay and subsistence came from a Treasury having many other unsatisfied claims upon it. The army, therefore, became as dependent upon the Crown as the Crown was upon the army, and the Militia became a counterpoise to the Standing Army and a National Security. Parliament, therefore, firmly held the Militia within its own control, as a protection against the encroachments alike of the Crown and the Standing army upon the Liberties of the People.

19. This feeling strongly developed itself throughout these reigns.[1] In 1673 the Commons made their first appeal to the King to have the Militia ready at an hour's warning for suppressing any tumultuous meeting of papists.[2] In 1678, when the Commons discovered that papists had been admitted through the connivance of the secretary Williamson[3] into the command of the army, they proposed an address to the Crown, setting forth "the imminent dangers arising from popish practices," and desiring that the Militia might be drawn out, considering that nothing can so well resist these attempts[4] as some part of the Militia—the settled legal forces of the kingdom—"actually in arms." The concurrence of the Lords being desired, that House discovered and apprised the Commons at a conference[5] that the proposals of their address could only be carried out by a special order from the Crown, and that if carried out, the Militia Acts gave no power to raise money for the pay of the force. To remove these difficulties both Houses readily passed a bill, to which the King however refused to give the royal assent,[6] alleging that it encroached upon his prerogative.

Development of this feeling throughout the reigns of Charles II. and James II.

20. After the Revolution of 1688 the attention of many people was very strongly given to the reorganisation of the militia[7] force as a substitution for the Standing Army, but no measure was passed for that purpose

Militia at the Revolution not reorganised.

[1] See Chap. IV., par. 1. [2] 9 Com. Journ., p. 229. [3] Ib., p. 541.
[4] Ib., p. 544. [5] 9 ib., p. 545. [6] Ib., p. 552.
[7] See vol. ii. State Tracts of William III.'s reign. "The Argument against the Standing Army," p. 565, *et seq.*; "The Militia Reformed," p. 595; "The History of Standing Armies," p. 656.

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until the middle of the next century. An Act—which became for some time[1] an annual one, and an authority from Parliament to the Crown—was passed for raising "the Militia for *one* year, though the month's pay formerly advanced be not paid."

A.D. 1752. Proposal to remodel Militia.

21. In the year 1752 the Commons gave a ready assent to the introduction of a bill[2] to make the Militia more useful, brought in by an Independent Member, and which they carried through all its stages up to the third reading, when, by the adjournment of the House, the bill was lost.[3]

A.D. 1756. Commons sanction an establishment of 62,000 Militiamen.

22. The apprehension of a French invasion led to an increase in the Standing Army, amounting to 34,263 men in 1755, and 49,749 men in 1756; but, notwithstanding this increase, the House of Commons in the latter year readily passed a measure (which was ultimately rejected by the House of Lords) for establishing a Militia force, consisting of nearly 62,000 men.

Proposal rejected by the Lords—and reasons for their rejection.

23. This rejection of the Militia Bill, though promoted by the Ministry, was owing to the decided opposition of the Lord Chancellor (Hardwicke),[4] upon the ground that it would, if passed, endanger the prerogative of the Crown in many ways. The Bill repealed the declaratory preamble in the Militia Acts of Charles II.,—obliged the Crown, before calling out the Militia, to apprize Parliament of a previous intention to do so,—provided no pay, as the existing Acts did, for the men when called out;—and, lastly, placed the execution of the Act in the hands of the Land Tax Commissioners—a body of men solely appointed by the House of Commons, and to which no Peer was ever appointed. "The scale of power," said the Chancellor, "in this Government has long been growing heavier on the democratic side; and I think this would add a great deal of weight to it. What I contend for is, to preserve a limited monarchy entire; and nothing can do that but to preserve the counterpoise."[5]

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[1] 2 William and Mary, c. 12; 10 Com. Journ., pp. 102, 163, 212, 279.
[2] 14 Parl. Hist., pp. 1199, 2007.
[3] Parl. Hist., p. 12077.
[4] 15 Parl. Hist. p. 706 to 770.
[5] Ib., p. 731.

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24. During a few succeeding years (from 1757 to 1763[1]) the Militia Law and raising the Militia upon the principle of the ballot,—now for the first time introduced with parliamentary sanction, to recruit the defensive forces of the kingdom,—engaged the serious attention of Parliament.

A.D. 1757—1763. Militia re-modelled.

25. By the first Act it was proposed to establish a force, consisting of 32,100 men, to be raised by ballot only—the principle of voluntary service being ignored.[2] That every freeman was bound to serve the Crown in the defence of the realm, and could be constrained to do so, was nothing new in principle; but to supply the regular forces with recruits during the reign of Anne, and again in the previous year, 1756, conscription Acts had been passed,[3] applicable only to the pauper class — to men not following any "lawful calling or employment,"[4] or not "having lawful and sufficient support," and, therefore, it was not an improbable event to happen, that our Honest Peasantry would, as they did, resent as an insult, the application of such a coercive measure to themselves, and look upon its provisions as oppressive.

An establishment of 32,100 raised by Ballot sanctioned by Parliament.

26. Unfortunately the gentlemen in many counties held themselves aloof from the proceedings of the Lords-Lieutenant; and the Officers' Commissions remained for some months unfilled.[5] Opposition arose in several counties, amounting in one instance to high treason. In 1758, at the Spring Assizes at York, four persons were found guilty of that crime, by obstructing the Militia Act,[6] and sentenced to death—a punishment which one of these men (the ringleader) underwent.

Opposition in the counties to the Ballot.

27. Invasion was still threatening, and the Commons addressed the Throne in May, 1759, that directions might be given to the Lords-Lieutenant[7] to use their utmost diligence and attention to put the Militia Laws into

Address to the Throne to complete Militia.

[1] 30 Geo. II. c. 25; 31 ib. c. 26; 32 ib. c. 20; 33 ib. c. 2, 22 & 24; 2 Geo. III. c. 21; 4 ib. c. 17.

[2] See preamble to 16 Car. I. c. 28, and Broadfoot's case, 18 How. St. Tri. 1324. Fost. Cr. Law, p. 157. [3] 29 Geo. II. c. 4. [4] Sec. 6. [5] 1 Annual Register, p. 112.

[6] 1 Annual Register, pp. 89-92; 13 ib., p. 71. [7] 28 Com. Journ., p. 600.

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execution. Some result had, however, already been attained by the measure, as up to July, 1759,[1] 17,436 men had been raised, and 6,280 were then upon *embodied* service.

Plan on which the Militia was reconstituted.

28. The plan upon which the Militia was reorganised differed greatly from the existing organisation under the Acts of Charles II., and it is in outline similar to that upon which it has since continued on foot. It was probably intended to form our Militia force upon the Prussian model, which, in 1752, was held up to the House of Commons as worthy of imitation.[2]

Direct authority of the Crown increased.

29. The Crown had given to it a more direct authority over the appointment of officers, as the names of the Deputy-Lieutenants were to be approved, and of the officers to be submitted for a twenty days' veto, previously to their appointment. In addition, the Crown had the appointment of the adjutant and sergeants.

Property qualification for officers imposed.

30. The Lord-Lieutenant had power to promote for meritorious service, but as a rule all the officers, save the King's Adjutant, were to have a *property* qualification, such a qualification having existed, to some extent, in the regular Army by the purchase system. The political expediency of entrusting the command of the Army to men of some established position in the State had, since the days of the Long Parliament, been acknowledged by statesmen of all shades of political opinion, and by the Militia Acts this security was given to the people. Every fourth year, one-third of the officers, save the King's Adjutant, were to be discharged for others willing to accept Commissions.

Men to be Infantry soldiers only—how raised.

Duties and qualifications.

31. The men were to be infantry soldiers raised from each County in the proportion specified, or with power to the Privy Council to re-adjust this quota; to be Protestants by oath, between the ages of eighteen and forty-five; to serve for three years; to train for twenty-eight days, and, if substitutes or volunteers, to be of five feet four inches in height. Any balloted man might pay a forfeit of 10*l.* (to be applied in providing a substitute), or serve

[1] 2 Annual Register, p. 273.

[2] 14 Parl. Hist., p. 1206.

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and receive half the price of a substitute, not exceeding 5*l.* Parish officers were permitted to supply volunteers, and to pay them such a bounty as the parish might have fixed.

32. In addition to a guinea to each man, the pay of the men, when they were drawn out and embodied, was to be the same pay[1] as soldiers of the line—commencing from the date of the Royal Proclamation. Their wives and children were also to be entitled to parochial relief if left destitute—a provision that has always been expressly made in favour of the Militia service. During training and exercise, this provision was not to be made; but the officers were at liberty to make a stoppage of sixpence a day for the soldiers' rations, damage of arms, and the residue for his family. Pay.

33. The clothes supplied by the Crown were to become their own property after one year's embodied or three years' disembodied service; but, until then, they were to be handed over with their arms and accoutrements to the Captain of the company, to be held by him at the cost of the parish, but under the control of the Lord Lieutenant as to their safe custody. The power to the Lord Lieutenant of searching for unlawful arms was not renewed. Clothes and Arms.

34. The punishment of the men, when up for training and exercise or embodied, was to be no longer by the *civil* magistrate, but under the Mutiny Act and Articles of War for the time being in force—save that no punishment, in time of training and exercise, was to extend to life and limb. Men to be liable to the Mutiny Act when on duty.

35. If the men made default in their appearance on training and exercise, they were to be punished by fine and imprisonment, and if on call for actual service by fine, and, in default of payment, by public whipping; such and other punishment, at *ordinary* times of the year, being awarded by the *civil* magistrate. All the penalties were to be Civil Magistrate to punish for non-attendance.

[1] This was a mistake. The service of a soldier in all countries and climates, is a far harder service than that of a militia-man at home. Therefore this provision was repealed in 1806, by the 26 Geo. III., c. 140. Having regard to the bounties for original enrolment and renewal of service paid to the militia, it is doubtful whether these men do not receive higher pay—having regard to service—than soldiers of the line.

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paid to the regiment, for shooting practice and for providing prizes for Marksmen.

Enlistment and enrolment.

36. Enlistment into the regular army was prohibited until the bounty money was returned by the recruit, and no militia officer was permitted to recruit by beat of drum, or to enrol men out of his own county unless the man was a native of it. The militia were also, for the first time since their original establishment, permitted to be billeted.

Power of Crown to *embody* the Militia for actual service and place it under General Officers.

37. The most important provision contained in the Acts was that which enabled the Crown—under the condition of *previously* apprising Parliament thereof, *if sitting*, or of calling Parliament together, if not sitting—to draw out and embody the militia "in case of actual invasion, or upon imminent danger thereof, or in case of rebellion," and to place it under General Officers of the regular army to serve in any part of the kingdom for the suppression of such invasion or rebellion—no express limit being imposed by Parliament upon the duration or period of their embodied service.

Relative rank of officers in Militia and Regular Army fixed.

38. The relative rank of the officers of the militia was then laid down as *equal* in degree, but *junior* in service, to the officers of the regular forces; but, in the formation of courts martial,—the officers of each force were to try only their own men, so that the distinctive rules of discipline in each force might be preserved.[1]

A.D. 1760.

Proposal to establish a Militia in Scotland.

39. In March, 1760, an attempt was made to introduce the same system into Scotland, and a bill was presented to the House of Commons,[2] supported by petitions, alleging the happy effects which the establishment of a regular militia had already produced in England;[3] but, on the motion that the bill be committed, it was lost by a majority of 194 to 84, the Secretary at War, Lord Barrington, being one of the tellers for the majority.[4]

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[1] The precedence of regiments in the Militia has been decided by lot. See the ballot of the 3rd Nov., 1797, made by the Lord-Lieutenant of each county. 35 Ann. Reg., p. 13. [2] 28 Com. Journ., pp. 800-28. [3] P. 362. [4] P. 872.

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40. The plan upon which the Acts were framed made no provision for the pay of the Militia during training and exercise—an intentional omission, which gave to Parliament the control—somewhat similar in principle to that which it had exercised under the previous organisation—of the Militia,[1] and which rendered an *Annual* Pay and Clothing Act necessary to enable the *Crown* to train and exercise the force. Preliminary to the introduction of the bill, a Committee of the House of Commons—and not the Responsible Ministers of the Crown—prepared an estimate of the charge of the militia for the year upon which the Annual Pay and Clothing Act was passed. Whenever the militia was embodied,[2] the estimate for pay and clothing was then brought in by the Secretary at War, and formed part of the ordinary estimates of the land forces.[3] The first Pay and Clothing Act was a vote of credit for 100,000*l*, "on account," but in subsequent years[4] the figures of the estimate have been adopted.[5] The preparation of this estimate was deemed one of the privileges of the Commons; but in the year 1862, at the instance of the late Sir George Lewis, it was abandoned without opposition in favour of the Ministers of the Crown, though the Annual Act continues to be passed.

Annual Pay and Clothing Act necessary.

Militia Estimates annually framed by Commons' Committee.

A.D. 1862.

Practice altered and estimate prepared by Secretary of State.

41. The Militia Acts, 1758-63, were passed as an experiment; but after an experience of a quarter of a century, the Militia Laws were consolidated (in the year 1786) in one Act,[6] containing as its preamble these emphatic words, that "a respectable military force, under the command of officers possessing landed property within Great Britain, is *essential* to the constitution of this Realm, and the Militia, now by law established, has been found capable of fulfilling the purposes of its institution; and, through its constant readiness on short notice for effectual service, has

Plan an experiment, but approved by Parliament in 1786.

[1] 4 Mahon's Hist. of Eng., Appendix. [2] 28 Com. Journ., pp. 21, 221-35, 600.
[3] Ib., pp. 326, 521; 3 Geo. II., c. 20. [4] 32 ib., c. 21. [5] 28 Com. Journ., p. 434.
[6] 26 Geo. III., c. 107.

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been of the utmost importance to the national defence of this Kingdom of Great Britain."

Increase of Militia since 1786.

42. From the year 1786, the Militia Force has continued to increase in numbers and in the confidence of the country. "The circumstances," said the late Mr. Wilberforce, addressing the House of Commons, "which rendered our militia force so dear to us as a constitutional force, was its being officered by country gentlemen, men of property, of family, of domestic connection, of personal influence, whose arms were in no conjuncture likely to be turned against their country."[1] It has, therefore, since its institution been readily increased by Parliament. In 1802 it ceased to be exclusively Protestant, and the numbers were raised to 46,963 men; at the present time they are 80,000 in peace, with the power to raise an additional 40,000 men in time of war.

A.D. 1715. Ireland. Militia establishment.

43. Hitherto the Militia of England (including Wales) has only been noticed; but in Ireland the Militia Establishment dates from the year 1715, when an Act was passed, after the Rebellion,[2] by the Irish Parliament, authorising Governors of Counties to array, as they should think fit, all such Protestants between the ages of sixteen and sixty to serve under that Act. In the year 1793, all the Acts were consolidated by the 35 Geo. III., c. 8, of the Irish Parliament; and a force of 21,660 men (Romanists and Protestants alike) was raised. In the year 1809, the Militia Laws of Ireland were consolidated by the 49 Geo. III., c. 120, passed by the Parliament of the United Kingdom; and under that Act—as amended by 17 & 18 Vict., c. 107, and by 23 & 24 Vict., c. 94—the numbers of the Irish militia are 30,000 men in peace, with the power to raise an additional 15,000 men in time of war.

A.D. 1793. Law consolidated by Irish Parliament.

A.D. 1809. Same by Parliament of the United Kingdom.

44. For Scotland no Act was passed till the year 1797.[3] At

[1] 1798. 33 Parl. Hist., p. 1588.

[2] 2 Geo. I. c. 9, s. 1.

[3] This statement must be accepted with some qualification. In 1672 the Parliament of Scotland passed a Militia Act (see vol. viii. Statutes of Scotland, p. 58.), but it was not acted upon.

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the close of the session of 1793,[1] Mr. Secretary Dundas laid upon the table of the House of Commons "a Bill for the better ordering the Militia of Scotland," which was read the first time, and printed. His object was to prepare the way for the adoption of the Militia System in Scotland, and he succeeded in doing so, for the Bill of 1797 was passed through Parliament without any opposition.[2] In its preamble it stated that experience had proved the value of the Militia as a defensive force; but the Act, when put in operation, was opposed by riotous proceedings in the Highlands[3] under the impression (then erroneous) that the ballot was used to enable the Crown to remove the people from Scotland. In 1802 the Militia was fixed at 7950 men; but under the existing statute, 17 & 18 Vict., c. 106, 10,000 men can be raised in ordinary times,[4] and an additional 5000 men in time of war by the 23 & 24 Vict., c. 94.

Scotland A.D. 1797. Militia established.

A.D. 1802. Law consolidated.

45. The Acts at present in force, under which the Militia of the Three Kingdoms are now formed, date, as to the English and Scotch, from the year 1802; and, as to the Irish, from the year 1809; all the Acts being overloaded with subsequent enactments, and urgently needing consolidation.[5] Since these years, the area of service for the Militia has been considerably extended, and though the Militia of each Kingdom exists as a distinct force regulated by separate statutes, it may be used interchangeably under the 22 & 23 Vict., c. 38; so that the whole Militia Force of the *Three* Kingdoms may be concentrated upon any point in *one* kingdom which the common enemy may select for his attack. The same Act also permits the Crown to accept voluntary offers from the Militia to serve in the Channel Islands or the Isle of Man.

Statutes at present in force.

The Militia of the three kingdoms can be used interchangeably.

46. The circumstances under which the Crown should be

[1] 48 Com. Journ., p. 947; 35 Ann. Reg., p. 175.
[2] 37 Geo. III. c. 103; 52 Com. Journ., pp. 660-9, 677.
[3] 39 Ann. Reg., p. 52. [4] 42 Geo. III., c. 91.
[5] In 1867, a Bill was laid on the table of the House of Commons and printed, to consolidate the law relating to the Militia (England).

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permitted to call out the Militia, have come under the notice of Parliament on various occasions. During the American War, in 1776, the power of the Crown was extended,[1] for a limited period, to *any* rebellion existing within *any* territory or dominion belonging to the Crown. But in the year 1852 it was proposed by Lord Derby's ministry to limit the power of the Crown to a very considerable extent. By their Bill, as introduced into the House of Commons, to consolidate and amend the laws relating to the militia (which was ultimately passed as the 15 & 16 Vict., c. 50), it was proposed to take from the Crown the power of calling out the Militia for the single purpose of suppressing rebellion or insurrection. The clause in the Bill, by which it was proposed to make this change in the law, was opposed by the independent members of the House,[2] to whose prudence we owe it that a power deemed by the House of Commons to be essential to our National safety was preserved.

Power of the Crown to embody Militia discussed in Parliament.

A.D. 1776. Enlarged.

A.D. 1852. Proposal to limit.

47. In 1854, it was considered expedient, having regard to the approach of actual war, to increase the power of the Crown by enabling the Government, without waiting for invasion, or the threat of it, to call out the militia "whenever a state war exists between Her Majesty and any Foreign Power;" and this power was given by the 17 Vict., c. 13. The immediate effect of the Act was probably little anticipated by its authors. It was argued in Parliament that the conditions of service had been so varied[3] by it that all the men enrolled under the old statutes were fairly entitled to claim their discharge, or to receive another bounty for serving under the *new* Act. The Government met the objection by offering a bounty or a discharge; and as many militiamen were found to have wives and families that would have become chargeable to the poor rates on the Militia being embodied, 8336 men were, from one or other of these causes, immediately released from their militia enrolments.

A.D. 1854. Extended to any time of war.

[1] 16 Geo. III., c. 4.
[2] 120 H. D. (3rd Ser.), pp. 287, 1063; 121 ib., pp. 693, 832, 907-15.
[3] 137 H. D. (3), pp. 546-58, 948, 77, 1173; 138 ib., pp. 130, 396.

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48. The ballot for the militia is said to be the parent of high bounties for service in the regular army.[1] The machinery of the ballot, held over the people in *terrorem*, was probably intended[2] to induce persons to come forward to serve as volunteers. Its cost is variously represented —by some at 24,000*l.*,[3] and by others at 40,000*l.*[4] per annum. A noble Lord Lieutenant, recently deceased, affirmed that, in his experience, each recruit cost 9*l.* 8*s.* in ballot expenses.

Ballot. Cost of it.

49. In 1829, an Act—which has since become an annual Act —was passed to suspend the ballot, but the ballot was put in force by Order in Council of the 29th December, 1830,[5] and continued in force till the month of February, 1832.[6] Some statesmen have challenged the expediency of suspending the ballot annually, and in 1847 and 1850,[7] debates of some interest arose, but the Bill was permitted to pass.

Ballot Act suspended.

50. So long as the ballot clauses remain on the Statute Book, they must be looked upon as available to the Executive Government whenever the Ministers of the Crown may deem their use essential to the public safety. Therefore, during the last session that the late Lord Herbert sat in the House of Commons, he proposed a measure which was adopted by Parliament for amending the Ballot Laws.[8] The Table in the Appendix will show the time in which men could be raised under the present law.[9]

A.D. 1860. Ballot law amended.

51. The Militia continues to be Local in its Organization, though all the expenses of it, except such as arise from the care and custody of the clothes, arms, and ammunition, are borne out of the Imperial Treasury. In 1854 a discussion was raised in the House of Commons, as to the propriety of relieving the counties from these expenses; but the Government of Lord Palmerston were firm in declining to accede to any such proposal. The law was therefore amended,

Expense of Militia borne by the Treasury, except for storehouses.

[1] 9 H. D. (O. S.), pp. 886-7, and 137 H. D. (3rd), p. 1291.
[2] See Army Impressment Acts, 29 Geo. II. c. 4, and 30 Geo. II. c. 8.
[3] 19 H. D. (2), p. 1452.
[4] 27 H. D. (3), p. 1155.
[5] 10 Geo. IV. c. 10; 21 H. D. (2), p. 467.
[6] 11 H. D. (3), p. 379.
[7] See 94 H. D. (3), p. 218; 113 ib., p. 149; 147 ib., p. 554.
[8] 23 & 24 Vic. c. 120.
[9] Note D.

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by giving to Counties the power, which they did not previously possess, of taking premises for Store purposes under the provisions of the Lands Clauses Acts, and this power has recently been extended to the acquisition of premises for Militia Barracks.[1]

Periods since 1757 during which the Militia has been embodied.

52. The Militia, since its establishment in 1757, has rendered embodied service to the country on several occasions. The first occasion was immediately after its formation, when during the seven years' war it was embodied against invasion.[2] The second instance was during the American War, when, in 1778, France entered into treaty with America; this was also against invasion, and the force remained embodied till 3rd March, 1783. The third time was for the suppression of insurrection and rebellion, succeeded by the threat of invasion.[3] The proclamation of embodiment issued in December, 1792, and of disembodiment in April, 1803. The fourth occasion was in 1803, upon the apprehension of a descent upon the coast by the Emperor Napoleon.[4] The fifth time was in 1815, under the authority of the 55 Geo. III., c. 77. The sixth instance was during the Crimean War, under the authority of 17 Vic., c. 13. The last instance was during the Indian Mutiny, under the sanction of the 20 and 21 Vic., c. 82.

Value of the Militia force.

53. The value of the services of the Militia in times of National emergency cannot fairly be questioned. In the apprehension of greater dangers than those which hitherto have happened, and from which it is said that a Standing Army alone can protect the country, it must not be overlooked that during the last century two hostile descents were successfully made upon the coasts of Great Britain; but attended with very different results. In Scotland, where no National Militia *then* existed, the Pretender landed with 100 men, and spread desolation into the centre of both kingdoms. In England, where the Militia and Volunteers had been organized, an expedition of 1400 French-

Landing of Pretender in Scotland in 1745.

Of the French in England in 1797.

[1] See 130 H. D. (3), p. 656; 134 H. D. (3), p. 1414; 135 H. D. (3), pp. 821, 898, 902; 17 & 18 Vic., c. 105; 18 & 19 Vic., c. 57; 23 & 24 Vic., c. 94; 31 & 32 Vic., c. 7, secs. 8 & 9.

[2] Lord Grenville's Speech, 29 H. D. (O. S.), p. 98; 22 Ann. Reg., pp. 55, 337.

[3] 34 Ann. Reg., pp. 158, 165; Lon. Gaz. 1 Dec. 1792, No. 13,480.

[4] 45 Ann. Reg., p. 647.

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men was driven from the coast of Devon by the Volunteers, and when the enemy had landed in Pembroke they were captured within a few hours by the Militia, under the command of the Lord Lieutenant.[1]

54. An important question remains to be considered, in relation to the power which the Crown has of *continuing* the Militia in a state of embodiment. In 1815 the Militia Force was permitted to remain embodied, after a definitive treaty of peace had been signed. In the previous November, Sir Samuel Romilly[2] raised the constitutional objection, that the Crown had no power to retain the Militia in service *after* the war or insurrection—for which it had been embodied—had absolutely ceased. It has been noticed in a previous paragraph (37) that the Act does not impose any limit upon the period of embodied service; and it was argued by the law officers of the Crown that this silence was indicative of an intention to leave to the Crown an *unlimited* discretion—subject to control by the House of Commons refusing to pass the estimates, and by Ministerial responsibility—as to the period when the embodied militia should be released from further service. The House of Commons upon two divisions, one in November and the other in February, 1815, supported the Government; but, within a few weeks after the last division, all doubt was removed by positive enactment,[3] as a bill was brought in, and became law, authorizing the Crown to hold the Militia in Embodied Service.

Power of Crown to retain the Militia in embodiment.

55. Whether the men of the Militia should be permitted to join the Regular Army under any circumstances, and upon what pecuniary terms, has been a fruitful subject of controversy. The policy of the Militia Act, 1802, was one of absolute prohibition; and while the militia is raised by ballot, it either weakens the defensive force or brings another man under the operation of the conscription. If both forces are

Militia enlisting into the Army.

[1] 39 Ann. Reg., p. 881.

[2] 29 H. D. (O. S.), pp. 563, 1090.

[3] 31 H. D. (O. S.), p. 267; 55 Geo. III. c. 77.



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Volunteer forces, then it is a question of finance—until a national emergency, as in the years 1812 and 1813, obliges the Crown to disregard every other consideration than that of finding recruits for the regular army. A single or double bounty (one earned in each service) may put recruits into the ranks of the Army upon unequal terms; and if one has gained this latter advantage by evasion or violation of the law, the evil is increased.

Militia in war permitted to serve abroad.

56. In the Peninsular War, Parliament, from urgent necessity, gave encouragement to the Militia, in certain proportions, to change their character from a Defensive force to that of an Offensive one, and *as Militia* to join the Army in Portugal.[1] In the Crimean War recruits *from* the Militia were freely accepted in the Army,[2] and voluntary offers to serve the Crown in foreign stations were sanctioned by Parliament,[3] but the Militia, *as such*, did not join and serve with the Army in the Crimea. The policy of each of these measures was at the time warmly discussed.

A.D. 1867. Militia Reserve Act.

57. The recent Act,[4] which enables the Crown to make conditional engagements with a portion of the Militia "to serve in the army as soldiers in the event of war," is no doubt a most valuable power to have in *reserve;* that is, in the event of war, or upon its apparent approach, —without waiting, as heretofore it has been necessary to do, for the previous assembling of Parliament and the passing of a special Act—to put this Act in operation, and *then* to make such engagements. But to use such a power under other circumstances is a matter of doubtful expediency. A certain annual cost is incurred for an uncertain result. All the advantages will have been given by the Crown in time of peace, for service *to be* given by the man in time of war. He *may* join the regular army, and do so in health and unmarried, or he may desert, or be maimed, or married. The experiment is not without danger —in other aspects than the financial one. It is based upon one or other of these assumptions, which may be fallacious,— that men will as readily join the Army in War time for a past

[1] 54 Geo. III., c. 1.

[2] This was done without express statutory sanction, and the discipline of the Militia was broken down. (See the Acts passed in 1803-13, collected, p. 227 of Recruiting Report, 1866.) [3] 18 Vic., c. 1. [4] 30 & 31 Vic., c. 111.

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bounty (which they have spent), as for a present one, which they are to receive; or that they will as readily join the Army, in war, for Foreign service, as the Militia for home service. Experience does not confirm either assumption, and it may turn out that the Crown has wasted both money and opportunity before war arises, and be embarrassed by the failure of the Act, after it has been declared.[1]

[1] So long as the present high bounty for re-enrolment in the Militia is given, it is not probable that men will very freely enlist in the Militia Reserve. The whole question is deserving of reconsideration.



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# CHAPTER IV.

## THE ARMY (THE GUARDS AND GARRISONS) BEFORE THE REVOLUTION OF 1688.

Parliament of Charles II. and James II. resolved against a standing army.

1. BOTH Houses of Parliament throughout the reigns of Charles II. and James II. were resolutely determined upon having no Standing Army[1] within the Realm. The necessity of maintaining garrisons in the various fortified places was admitted, and a guard to the sovereign had not been unknown to the people, since the Yeoman of the Guard and Gentlemen-at-Arms[2] had been raised by Henries VII. and VIII.; and though the Commons protested[3] against a guard being raised for the security of King Charles I.,[4] yet at a later period, when the king had surrendered to them, they declared an infantry force to garrison the fortresses, and a cavalry force of 5,500 men, to be necessary for the security of the kingdom or for their own protection.

Army disbanded.

2. After the Restoration, the Convention Parliament proceeded at once to disband the army.[5] The King consented, at the instance of his Chancellor (Hyde,) upon these arguments:—"That they were a body of men who had cut off his father's head; that they had set up and pulled down ten several sorts of government, and that it might be his own turn next, and so (continues the writer[6]) his fears prevailing over his ambition, he consented to disband them." The people

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[1] Lord Coke assures us that Henry VIII. promised to strengthen the kingdom with the perpetual maintenance of 40,000 men as a standing army, if the abbey lands were granted to him by Parliament. What would have been the fate of this kingdom had he kept his word, and the 40,000 men been maintained, *solely* dependent on the Crown? Constitutional liberty would be now overthrown. 4 Coke Inst., p. 44. [2] See Appendix for an account of these corps, Note E.

[3] 2 Parl. Hist., p. 1238; 2 Com. Journ., p. 600. [4] Com. Journ., pp. 90-128, 91-141.

[5] 12 Car. II., c. 9, 15, 20, 27, 28.

[6] History of Standing Armies, vol. ii. State Tracts, p. 661.

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were heartily glad to get free of them. "So long," said Sir W. Morrice (and the same sentiment was re-echoed throughout that period by other members), "as the soldiery continued, there would be a perpetual trembling in the nation, for they are inconsistent with the happiness of any kingdom."[1]

3. At this period of our history, the Crown, for a stipulated annual sum—which was usually granted at the accession of each Sovereign for life—contracted to defray the whole expenses of the state. The King was therefore allowed to apportion this sum according to his own judgment,[2] without any definite parliamentary responsibility attaching to his ministers. The Act of disbandment sanctioned the continuance of "Guards and Garrisons." The "Garrisons" were to be re-established and placed in the same condition they were in in the year 1637,[3] and out of the residue of soldiers, including some regiments that were in Scotland, the King was to be at liberty to retain, as a guard,[4] "such of them or any other as his Majesty shall think fit otherwise to dispose of and provide for at his own charge."

Except "guards and garrisons."

4. This Act, therefore, gave an authority to the King which was easily abused, as, unfortunately, it was silent on that point upon which all Parliaments subsequent to the Revolution have justly laid such stress, viz., the number of men to be retained in pay as soldiers; the only limit, as it will have been noticed, being the King's ability to maintain the troops, using as he might do any revenue he could so appropriate. Throughout the reign of Charles II. the retention of these troops in the employ, and nominally in the pay of the Crown,—for they were too often left at free quarter,—was a grievance to the people, and very many substantial reasons existed, as it will be seen, for making it so.

Numbers unlimited.

5. With the exception of the troops that were appointed and commissioned[5] to particular garrisons—as for the Isle of

[1] 4 Parl. Hist., p. 115.
[2] 12 Car. II., c. 15.
[3] As to the Guard of the Sovereign, see Appendix F.
[4] Sir James Mackintosh; 34 H. D. (O. S.), p. 537.
[5] See War Office Com. Bk. 1255, containing entries from 13th Oct., 1660, to the 19th May, 1684, pp. 3, 7, 28, 64.

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Scilly, the Tower of London, Pendennis Castle, "our garrison at Portsmouth," or for particular service, as "the Admiral's Regiment" and "the Holland Regiment." The residue (Guards) were engaged as armed police, and in carrying out the oppressive laws against Dissenters.

Police duties of the Guards.

6. One of the few statutes that have ever expressly sanctioned the employment of the Military in the discharge of Civil duties, was the 22 Car. II., c. 1., to suppress conventicles. That Act authorized their suppression and dissolution, and the capture of persons unlawfully assembled therein. That the Guards were so employed is evidenced by an entry in the War Office Records,[1] giving a list "of the arms broken at several times in dispersing of Conventicles and at the fire in Southwark."[2]

In suppressing conventicles.

7. Other entries show their employment under Royal Warrants—in police duties,—as to apprehend highway robbers,[3] thieves, and other malefactors; to take up straggling seamen, running away from ships or impress-masters; to pluck up and destroy all tobacco planted;[4] to patrol the road from Bedford to Dunstable for thieves; and lastly, in a service which still continues and under date of 27th February, 1673-4, is ordered in these terms—"to send a careful officer with such number of soldiers as (upon Mr. Betterton's request) you shall think reasonable out of the Coldstream Guards, to the theatre in Dorset Gardens, to keep the peace there at and about the times of public representations, so that no affront may be given to the spectators nor to the actors."[5]

Various other duties.

8. But while the Army was thus engaged, under Royal Authority, in enforcing the law, its members claimed —and the Crown supported them in so doing—to be exempt from the authority of the Civil Magistrate, to be amenable *only* to the Sovereign acting through their

Claim exemption from Civil tribunals.

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[1] Mis. Bk. 512, p. 99, 21st Sept. 1670.

[2] See letters of Secretary-at-War to Attorney-General, Nov. 1685, to take a conventicle house for a guard-house at Yarmouth, and complaint of the Inhabitants, Appendix IX.

[3] Mis. Bk. 512, p. 1.

[4] Ib., p. 387.

[5] Mis. Bk. 512*a*, pp. 172, 235.

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Military Superiors. It will be seen from the Appendix what were the provisions of the Articles of War, in the Reigns of Charles I. & II., and of those dated 1666, put forth, under the advice of the Captain-General (the Duke of Albemarle),[1] declaring that no magistrate should imprison an officer or soldier except for high treason, or killing or robbing any person not being a soldier.

Army retained to constrain the people to obedience.

9. These Articles declared that one of the main objects for which the Army was maintained was "the safety of our person and Government, and the security and peace of our kingdom," and that its continuance was to be "no longer than the mind of our subjects should be composed to unity and due obedience." It may therefore readily be supposed that many orders would be given and executed as *legal* that had for their object the constraint to obedience of those whom the Sovereign was pleased to consider as his unruly subjects. The Army thus became an instrument of coercion to the people, who were unable to appeal to the legal tribunals of the kingdom for protection or redress against their oppressors.

As to the recovery of debts due from the army.

10. As to the recovery of debts due from officers or soldiers, the remedy, according to the Articles of War, was to be sought for from the Judge Advocate General in the first instance, before the Common Law Courts could be appealed to. The documents under date of March 14, 1669,[2] February 15, 1674-5, January 21, 1675, and September 4, 1692, extracted from the War Office Records, will show the Jurisdiction which the Crown exercised,—and the Authority which it asserted—to prevent members of the Army from being arrested for debt.

Punishment of soldiers under Articles of War illegal.

11. But the most important feature to observe upon is, that while the Crown asserted over its soldiers an exclusive jurisdiction in military offences, and one co-ordinate with the judges in civil offences, it could not *legally* inflict any punishment upon them extending to life or liberty by its own authority or that of military tribunals. This was well known to be the law in Charles I.'s reign by the generals in command of his northern army.

[1] See Appendix X.

[2] Appendix XI.

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12. The Mutiny Act, with the provisions it now contains, was therefore essential for the government and establishment of the army, as will be understood on reference to one only of the earlier statutes. The Great Charter of King John had made the people of England free men. It protected them (1) from the payment of scutages or aids imposed, unless by the general council of the realm;[1] (2) from having their goods or chattels taken by the officers of the Crown without money paid down, or credit given by the goodwill of the seller;[2] (3) from having their horses or carts taken in like manner but by the goodwill of the freeman;[3] (4) from suffering in life or limb without a WRIT of inquisition freely granted into the cause thereof; (5) from imprisonment, banishment, or other punishment, save by the judgment of his peers, or by the law of the land;[4] (6) from the denial of justice or right; and, lastly, from trial save by those who know the law of the realm and mean duly to observe it.[5]

A Mutiny Act essential to annul the provisions of Great Charter of King John.

13. Prior to the Mutiny Act, the power of executing martial law was conferred by commission under Royal sign-manual, appointing the General Captain-General or to the chief command. Such a power was conferred upon the Earl of Northumberland in 1639, when he was appointed to command the King's army in the North.[6] He acted upon it, and a soldier was shot for mutiny. The legality of these proceedings was, as we have seen, questioned. "My Lord Northumberland did write to me that having had occasion to look into the power he hath to give commissions, the lawyers and judges are *all* of opinion that martial law cannot be executed here in England, but when an enemy is really near to an army of the King's, and that it is necessary both my Lord and *I* do take a pardon for the man that was executed here for the mutiny." Lord Conway (from whose letter to the Archbishop of Canterbury, as President of the Council, this extract is taken) then proceeds:—"If this be so, it is all one as to

Martial law declared illegal.

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[1] Creasy on the Constitution. [2] Ib., p. 144. [3] Ib., p. 148. [4] Ib. [5] Ib., p. 155.
[6] See the Commission set out (3 Rush., p. 918.) See also Lord Arundel's Commission, in Appendix V.

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break troops, for as soon as it shall be known there will be no obedience; therefore put some remedy to this by all means very speedily. There are now two men here in prison for killing of men, and the provost-marshal for letting them escape out of prison. I do forbear to call them to a council of war, neither dare I tell the reason why I do not."[1]

14. The only remedy then, was to issue, as was done for the punishment of mutineers in Essex,[2] a special commission of Oyer and Terminer for the speedy trial of the offenders; though this course Lord Conway said "would undo all, for the soldier must, to maintain discipline, be punished by his officer."

The remedy; trial by special commission of Oyer and Terminer.

15. If the Subject—having no means of recovering a just debt from any Soldier—had but a slender protection against their exactions, he had absolutely *none* against the Crown in the billeting and quartering of soldiers, upon him, or on his impressment into the ranks of the army. If the resources of the Crown failed, or were squandered, upon other objects, the soldier's pay was left unprovided for, and consequently he lived upon his host at free quarter as a matter of necessity. It was of little avail to urge the Petition of Right as a prohibition, having regard to the fact of its constant violation, both by Parliament and the King, since its cession.

Billeting and free quarters.

16. The billeting of soldiers was heard of as a grievance, and the War Office records show that it was resorted to, first "in taverns," and "for want of quarters enough in such houses," then in *other* houses.[3] Certainly, to ensure the good behaviour of troops in their quarters, the Articles of War provided a punishment against their abuses:—"If any shall presume to beat or abuse his host, or the wife, child, or servant of his host, where he is quartered or billeted, he shall be put in irons for it; and if he do it a second time, he shall be further punished, and the party wronged shall have amends made him; and if any presume to exact free quarter, *without leave of the chief officer*

In private houses.

Article as to quarters.

[1] See Appendix VII.

[2] See the course taken to try the Mutineers in Essex (3 Rush., p. 1194-5).

[3] Appendix XII.

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upon the place, they shall be severely punished at the discretion of a court-martial;" but the punishment was not to be adjudged by a civil tribunal.

17. In some cases the inhabitants were quite able to take care of themselves; for instance, there is an entry,[1] under date of April, 1674, of a claim for quarters, &c., "for which," the captain, who is the claimant, states, "the magistrates and inhabitants of Rumney and Hyde arrested my lieutenant till the payment of the said sum was made by me;" and again—from the same claimant—"for shoes, stockings, and other necessaries furnished to the soldiers by the said towns (after their being taken by the Dutch), for which said sum the said constables and townspeople seized upon me till such time as I gave them a note under my hand to pay them in London."

Inhabitants oblige officers to pay for quarters.

18. The distribution of the army rested solely with the Crown, and any place was selected for the quarters of the troops that convenience might suggest. That being so, an intimation was sent by the Secretary of State to the Local Authorities that they, as representing the inhabitants, were expected to find a Guard-house for the Soldiers, and Rooms for the Officers—an intimation which the fear of free quarter and billets inclined them to comply with.[2]

Local authorities required to provide guard-houses, &c.

19. Throughout the reign of Charles II. the Standing Army was, as will be shown, a fruitful source of controversy between the King and Parliament—the cause of suspicion and accusation against his ministers. One good, however, resulted from this evil — viz., the practice of the specific application of Public moneys to Public or National purposes. And the first instance of this after the Restoration occurs in the year 1666, when the king became involved in a war with the Dutch. A subsidy was then granted by the 18 & 19 Car. II., c. 1, and in the Act were inserted clauses[3] of exemption from its taxation in favour of the army and navy, and of appropriation, — 1st, to apply £30,000, *and no more*, to the payment of the

Standing army throughout Charles II.'s reign a cause of contention.

1666.

Appropriation of supply to the two specific objects.

[1] Mis. Bk. 512*a*, p. 269. [2] Appendix XIII. [3] Sect. 2.

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Guards; and, 2ndly, to secure the application of the residue of the subsidy to the service of the King *in the war.*[1]

20. Out of these appropriations arose an inquiry (which the Commons, as affecting other moneys had previously pressed upon the notice of the King and the House of Lords) into the Expenditure and Appropriation of moneys voted for Public purposes. The original proposal of the Commons to the Lords was the formation of a joint committee composed of members of both Houses, with the power to take the accounts *on oath.* This was objected to by the Lords as a novelty[2] in Parliamentary usage, as one which the two Houses alone had not power to carry out. To meet this objection, it was therefore proposed to add a clause to the Poll Bill then passing through the House, and after the substance of the clause had been agreed upon, the clause itself was converted into a separate bill, and as such sent up to the Lords for their adoption.

Commissioners appointed to take account of public moneys.

Commons propose a Committee of both Houses.

Act of Parliament necessary.

21. It must be noticed, as a matter of privilege (this privilege itself becoming a subject of controversy between the two Houses in William III.'s reign)[3] that the twenty-four Commissioners (nine being a quorum) were named by the House of Commons, but were not all members of it. The Lords do not appear to have openly resented this assumption of power by the Commons, but after the Bill had reached their House they took the unusual course of postponing its consideration,[4] and of presenting to the King a petition to issue a Commission of Account—a proceeding which the Commons declared by their resolution "to be unparliamentary and of dangerous consequence." Notwithstanding these hard words, the Bill was subsequently proceeded with by the Lords,[5] though it did not become law during that session.

Commissioners appointed by the House of Commons.

Bill lost by Lords' delay.

22. The Commons were determined upon having such a measure passed, and at the meeting of Parliament in March, 1667, they passed a Bill for taking the public

Commons press on and pass another Bill.

[1] Sec. 33; 2 Hal. Const. Hist., p. 53. [2] 8 Com. Journ., pp. 637-47, 655.
[3] 8 Com. Journ., p. 661. [4] Ib., p. 670. [5] Ib., pp. 672, 683, 692.

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accounts[1] by nine commissioners (not members) whom they selected out of twenty names furnished to the committee, and the Bill was accepted by the Lords and passed as the 19 & 20 Car. II., c. 1.[2]

Address that Army may be disbanded at the Peace.

23. After the Dutch had ravaged the coasts, 12,000 men were raised for the Land Service, and Parliament was suddenly summoned to assemble on the 25th July. Upon that day—before the King had formally opened the session—the Commons came to this resolution: "That His Majesty be humbly desired by such ministers as are of his Privy Council, that when a Peace is concluded the new raised forces be disbanded."[3] Their address was presented, and replied to by the King on the 29th July; Parliament was forthwith prorogued, and no other business entered upon.

Impeachment of Lord Clarendon.

24. Upon the opening of the session in October, the Commons further evinced their antipathy to a Standing Army by framing the first article of their impeachment against the Earl of Clarendon (which was sent up to the House of Lords in November) in these terms:—"That the Earl of Clarendon hath designed a Standing Army to be raised, and to govern the kingdom thereby; and advised the King to dissolve the present Parliament, to lay aside all thoughts of Parliament for the future, to govern by a Military Power, and to maintain the same at free quarters and contributions."

A.D. 1672.

Troops raised for the Dutch war.

25. War with Holland having been declared in 1672, troops were raised, Articles of War put forth,[4] and the King's proclamation issued[5] to prevent disorders that might be committed by the soldiers. Discontent immediately arose, and upon the opening of Parliament in February, the

[1] 9 Com. Journ., pp. 3, 8, 9, 15, 23, 26, 28, 35, 36, 38, 41 and 42.
[2] 3 Hats. Prec., 469, 471. [3] 8 Com. Journ., p. 692; 4 Parl. Hist., p. 692.
[4] See these printed at p. 238 of Report on Recruiting, 1867.
[5] Dated 4th Dec., 1672; see Appendix XIV.

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King, in his speech from the throne,[1] referred to "the jealousy, so weak and frivolous, as having maliciously spread abroad that the forces raised in this war were designed to control law and property." Short as the Session was, the Commons did not, however, allow it to close (in March) without presenting an address[2] of grievances complaining of the King's proclamation "as a measure exempting the soldiers from the ordinary course of justice," of the quartering of soldiers in private houses, and of their departure from quarters without paying for them, and tendering their plea and advice, "that when this present war is ended, all the soldiers which have been raised since the last Session of Parliament may be disbanded," and that the King would be pleased to consider of the irregularities and abuses of pressing soldiers, and to give orders for the prevention thereof for the future.

Commons remonstrate.

26. The continuance of an army obliged the Crown to have recourse to billeting, and thus enabled the troops to extort from the householders from 5*d.* to 6*d.* a-day to buy them out. The existence of Martial Law was a cause of great suspicion to the people, for, as we have seen, the men of the Militia were subjected only to the tribunals of the civil Magistrate. Upon the assembly of Parliament, in October, 1673, the sentiments of the people found expression in the House of Commons. The war, it was represented, "had been declared without the advice of Parliament, and as the excuse for raising troops."[3] "With the militia the country had success and safety in the year 1588." "That force was our security at home, for it would defend but never conquer us."[4] "In the army it has grown into a principle that Parliaments are roots of rebellion and Magna Charta sprung out of them."[5] "How could Parliament trust the army, when he that commanded in chief was a foreigner (Count Schomberg), and the next in command a papist (Lord Faversham)?" So the Commons on the 31st October resolved to refuse any supply,

Billets and Martial Law.

Standing Army voted a grievance.

[1] 9 Com. Journ., p. 246. [2] Ib., p. 276. [3] 4 Parl. Hist., p. 394. [4] Ib., p. 606.
[5] See the Address, 12th Jan., 1673, for the "Militia" at an hour's warning, to be ready to suppress any tumultuous meeting of Papists, 9 Com. Journ., pp. 285, 292.

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On the 3rd November they voted "the standing army a grievance," and were again forthwith dissolved.[1]

A.D. 1673. Resolution in favour of the Militia and against a standing army.

27. Upon the reassembling of Parliament, in January, 1673, the Commons evinced the same determination to stand by the Militia, and to free the people from the grievance which they had presented to the King, at the close of the last session. A Committee of the whole House on grievances resolved, and the House adopted their resolution, "that the continuing *any* standing forces in this nation, other than the Militia, is a great grievance and vexation to the people; and that it is the humble petition of this House that the King will immediately cause to be disbanded that part of them that were raised since 1st January, 1663."[2]

King promises to reduce it.

Peace was announced by the King, in reply to the Commons' address, and a promise given to "reduce the army to a less number than they were in the year 1663."

Commons inquire into the marching of the Scotch army into England.

28. The attention of the Commons during the session was drawn to an Act[3] passed by the Parliament of Scotland (at the instance of the Duke of Lauderdale), which obliged that Kingdom to raise 20,000 foot and 2,000 horse, and this Force, when raised, to march at his Majesty's call into any part of his dominions. The Independence of either Kingdom might therefore be lost by a Scotch army brought into England or Ireland at the King's pleasure. The Commons therefore appointed a committee "to inspect the laws lately made in Scotland, whereby our army is authorised to march into England or Ireland, and to such other laws as do tend to the breach of the Union of the two Nations, and to report the same to the House, and produce the Books." The committee were prepared to present their report to the House when the King prorogued Parliament.[4]

Also on the right of the King to send English troops abroad.

29. But a matter hardly less important was the right which the King exercised without the assent of Parliament, viz., of sending the army abroad into the dominions of France. The evil was one of a double aspect: it

[1] 9 Com. Journ., p. 286. [2] Ib., p. 305.

[3] An Act for settling the Militia, vol. viii. Statutes of Scotland, p. 58. Hist. of Standing Armies, vol. ii. State Tracts, p. 661. [4] 9 Com. Journ., p. 314.

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enabled the King to hold a large army in pay at the cost of the French—which army could at any moment, by his order,[1] be landed in England to coerce his own subjects,—or it obliged the King to retain the soldiers there and to recruit their ranks out of the English population. The House of Commons, in April, 1675, therefore resolved to address his Majesty "for the speedy recall of these troops and for hindering any more from going over for the future."[2]

30. It must be mentioned, in the order of date, and as introductory to subsequent matter, that the Commons resolved, in March, 1676, to build thirty ships of war, and raised specific funds for the purpose. The Act 29 Car. II., c. 1, contained clauses of appropriation, which not only provided that the Treasury should pay the money to one person (the Treasurer of the Navy),[3] Mr. Seymour; but prohibited him, under a penalty, from issuing it to any other intent and purpose whatsoever than the building of these ships. The Act also provided that an account of all the issues made should be transmitted to the House of Commons direct.

Subsidy Act for thirty ships, 29 Car. II., c. 1.

31. In January, 1677, war was about to be declared against France, and Charles II. assumed to act with candour towards Parliament. On the opening of the session he asked for their aid in the supply of ninety ships and in raising 40,000 men. After a rebuke from the King, the Commons proceeded in the matter of supply, and in their proceedings the first germ is to be found, since the Restoration, of our present System of Estimates.

A.D. 1677. War with France.

32. On the 8th February an Establishment of the charge of maintaining a regiment of Foot was read and referred to the Committee of Supply. The number of men was then voted during *an actual war* against France, and it was referred to a committee to prepare an estimate[4] of

The first Estimate since the Restoration.

[1] They were recalled by the King, and Parliament apprized thereof in his speech from the throne, Jan. 1677 (9 Com. Journ., p. 427.)

[2] 9 Com. Journ., 319, 426; 4 Parl. Hist., p. 706.

[3] Sect. 61, seqq.

[4] 9 Com. Journ., p. 435.

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the charge of maintaining these men for a month. This estimate was laid before the House on the 14th February,[1] and a vote taken for a total monthly expense by a majority of 147 to 131. They, however, on the 15th, refused, by a majority of 137 to 112, to allow a paper containing "A List of General Officers and their Entertainment" to be read.[2]

Subsidy Act with clauses of appropriation.

33. This Subsidy Act (29 & 30 Car. II., c. 1) had also clauses of appropriation similar to those inserted in the Act for the thirty ships; and that an army might not be maintained in England, instead of in France, and the resources of the people so misapplied, the Commons, on the 16th March, 1677, addressed the King[3] to declare war *immediately* against France.

Second address on the subject of declaring war.

34. On the reassembling of Parliament in May, 1678, war was still undeclared, and peace spoken of. About 30,000 men appear to have been raised[4] in the short space of forty days; and the Commons again addressed the King to enter into war[5] or speedily to disband the army. The King had no such intention, and, in reply to their address, asked the Commons for a supply to maintain the army. But the House resolved (*nem. con.*) "that all the forces that have been raised since the 29th September,[6] 1677, be forthwith paid and disbanded," and proceeded to carry out their resolution.

Commons resolve to disband the army.

Estimate of cost, and Act passed for disbanding.

35. The Committee of Supply had the Commissary and Paymaster of the army before them, obtained an account of all the forces that had been actually raised,[7] formed an estimate of the sum due to them, and, notwithstanding a message of remonstrance[8] from the King, passed a Bill with appropriation clauses for the disbandment of the forces on or before the 27th of July[9] next. This Bill the Lords adopted; but as the time for the disbandment appeared too short, they enlarged it. A controversy on the question of privilege[10] was raised between the Houses upon this alteration, but the Bill was finally agreed to as the 30 Car. II., c. 1.

36. The debate[11] in the House of Commons on the King's

[1] 9 Com. Journ., p. 438. [2] Ib., p. 439. [3] Ib., p. 455. [4] Ib., p. 500. [5] Ib., p. 484. [6] Ib., p. 485. [7] Ib., p. 487. [8] Ib., pp. 491, 502. [9] Ib., pp. 493-5. [10] 505 et seqq.; 3 Hats. Prec., p. 424. [11] Parl. Hist., p. 988.

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Message of Remonstrance is marked with the same determination that the Commons had shown on all other occasions when the subject of the standing army came before them. "Keep up the army," said Colonel Birch, in a spirit of prophecy, "for fear of France, and keep it up for ever." And as to its use as a police or for defensive purposes only, "the Crown of England," said Mr. Vaughan, "is established by law; and had it not been so, King John's resignation to the pope had been good. If any man is so hardy as to advise the King to govern by a Standing Army, he would subvert law, and it is against the government of the nation. The King has his Posse Comitatus[1] and the Militia to oppose invasion and rebellion, and he may raise arms for defence of an alliance. These are all the ends to answer just government, and I believe the King will do no otherwise. But the keeping the army up is certainly in *terrorem populi*, and the laws abhor all arms but legal arms. These forces are upon free quarter, and if you let them stand against law, you will have little use of law when their strength is above law. The longer you keep them here, the longer you must pay for them, and so you give up the liberties of the people you represent. You cannot keep them one hour longer, without giving up those you represent."

Spirit actuating the Commons.

37. But the army was *not* disbanded by the King, and upon the opening of Parliament in February, 1678,[2] his speech invited the Houses to consider whether, "in the present state of Europe, it was prudent to reduce the land and sea forces, and to what degree." The Commons do not appear to have addressed the King in answer to his speech, but on the 22nd of November they presented an address for the *militia* to be kept in readiness for the suppression of insurrection, and resolved "to take into consideration the *state of the nation* in relation to the *army*."[3]

Army is not disbanded.

Both Houses agree to hold the Militia in readiness.

38. While these measures were pending, the King, on the 25th of November, again besought the House for their advice as to continuing the troops in pay or disbanding them. Their *first* resolution, after hearing the address, was that "a Bill for raising the militia be,

King asks delay—but the Commons proceed with their second bill to disband, 31 Car. II., c. 1.

[1] See the Address of the House of Commons to the King, for calling out the Militia (9 Com. Journ., p. 544). [2] 9 Com. Journ., p. 516. [3] Ib., p. 545.



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committed to a committee of the whole House," and *then* they passed on to other business. Parliament was inflexible in its resolution, and, after some controversy between the two Houses upon its terms, a second Act was passed for the immediate disbandment of the Army.[1]

A clause in this Act against future billeting of the army.

39. Neither the Journals nor the Parliamentary History make any reference to the most important clause—inserted in this second Act—absolutely prohibiting the billeting of troops, and declaring it to be illegal:—"And whereas by the laws and customs of this realm,[2] the inhabitants thereof cannot be compelled against their wills to receive soldiers into their houses and to sojourn them there: Be it declared and enacted by the authority aforesaid that no officer, military or civil, nor any other person whatever, shall from henceforth presume to place, quarter, or billet any soldier or soldiers upon *any* subject or inhabitant of this realm of any degree, quality, or profession *whatever*, without his consent. And that it shall and may be lawful for every such subject and inhabitant to refuse to sojourn or quarter any soldier or soldiers, notwithstanding any command, order, or billeting whatever."[3]

Commons impeach Mr. Seymour for misappropriation under 29 Car. II.

40. The Commons appeared to think that they had been trifled with too long, and that those Ministers of the Crown who had violated the provisions of the Appropriation Acts, or had advised the King to continue the Army on foot in defiance of their resolutions, should be brought to justice. Against Mr. Seymour, a member of their House, Articles of Impeachment were prepared. The first of them, under the 29 Car. II. c. 1, being in these terms:—"He, the said Edward Seymour, on or about the year 1677, being then Treasurer of the Navy, did, contrary to the said Act,[4] and contrary to the duty of his said office, lend the sum of 90,000*l.* at 8 per cent., parcel of the said sum, raised by the said Act, being then in his hands, for and towards the support and continuance of the army then raised, after such time as, by

[1] 9 Com. Journ., p. 563. [2] 31 Car. II., c. 1. [3] 31 Car. II., c. 1, sec. 32.
[4] 8 How. Stat. Tri., p. 129.

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an Act of Parliament, the said army ought to have been disbanded; whereby the said two several Acts were eluded, and the said army was continued, and kept on foot, to the great disturbance, hazard, and danger of the peace and safety of this kingdom; and the nation was afterwards put to a new charge of raising and paying the sum of 200,000*l.* for the disbanding of the said army." The trial was appointed for the 15th of January, 1681, but Parliament was prorogued at the time, and soon after dissolved by the King, and no further proceedings appear ever to have been taken against the accused.

41. The next person selected was the Lord Treasurer, against whom the accusation of high treason was laid:—"That he hath traitorously endeavoured to subvert the ancient and well-established form of government in this kingdom,[1] and instead thereof to introduce an arbitrary and tyrannical way of government; and the better to effect this his purpose, he did design the raising of an army, upon pretence of a war against the French King, and to continue the same as a standing army within this kingdom; and an army being so raised, and no war ensuing, an Act of Parliament having passed to pay and disband the same, and a great sum of money being granted for that end, he did continue the army contrary to the said Act, and misemployed the said money given for the disbanding, to the continuance thereof; and issued out of His Majesty's revenues divers great sums of money for the said purpose, and wilfully neglected to take security of the pay-masters of the army as the said Act required; whereby the said law is eluded, and the army is yet continued, to the great danger and unnecessary charge of His Majesty and the whole kingdom." Danby, it is said, remained imprisoned in the Tower till bailed by Judge Jeffreys, but the impeachment was never proceeded with.

The Lord Treasurer (Danby) impeached under the 30 Car. II., c. 1.

42. Although Parliament, and especially the Commons, had repudiated the army as a National force—by placing it wholly under the command and pay of the Sovereign—they were not indifferent respecting the persons of

Parliament controls the appointment of officers and the com-

[1] 11 Stat. Tri., pp. 625-6.



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mand of the Army.

whom it should be composed, and more especially by whom it should be commanded. In any country a Standing Army may be a means to an end, and under the exclusive direction and control of one man, whether sovereign or subject, the political equipoise in the State may at any moment be destroyed. The security which the Parliament sought for against this evil, was that of placing the Command of regiments in the hands of such of their own countrymen as were men of high social position, holding large possessions and attached to the Protestant succession. Men of this class would never, as experience soon proved, lend themselves either to the execution of an order to coerce their fellow citizens, or to act against the Constitution.

Commands to be given to men of high social station.

43. In 1672 a jealousy arose against the King for raising troops, and he deemed it prudent to vindicate this measure to Parliament by assuring them "that no man's property or liberty should be invaded." As a guarantee for the public safety, the Lord Chancellor added in his speech "that the seven or eight regiments then raising were to be placed under the command of persons of the *greatest fortunes and quality*."[1] Again the views of the Commons were plainly shown upon this matter in their impeachment of Lord Arlington for the employment of Schomberg. Probably no foreigner could have been more safely trusted by the English than Schomberg; but in Parliament jealousy was expressed against him. When, therefore, the Commons came to frame their charge against Arlington for advising his employment,[2] the gravamen of it was not his *foreign* extraction, but that the employment of "a stranger" was "a great dishonour and discouragement to all loyal *nobility and gentry* of this nation."

Political danger in the employment of needy men as officers.

44. Other considerations would be present to the minds of the King and Parliament upon the political danger of employing needy men as officers in the army.[3] The great impediment to the disbandment of the Parliamentary army was the want and necessity of the officers

[1] 9 Com. Journ., pp. 246-7; 4 Parl. Hist., p. 502. [2] 9 Com. Journ., p. 294.

[3] See the arguments on this subject used in the Debate on Augmenting the Forces (1740), 11 Parl. Hist., 960 *passim*.

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*when* disbanded,[1] which led them to oppose such a measure Therefore to allay the anxiety manifested as to the retention of the army in pay after the prospect of a war with Holland had passed off, the King, in his speech from the throne, assured both Houses "that the persons *now* in commission are such as will be as desirous to be out of employment as to continue in it."[2]

45. Against the employment of Roman Catholics in *Command* of the army, the Commons were even more vigilant. The Test Act—so far as need be referred to here—was passed in 1672 to exclude Roman Catholics from "military"[3] office, "command or place of trust, and from the receipt of pay," under certain pains and penalties.

Roman Catholics by the Test Act prohibited from commands.

46. As to the army, the observance of the Act was jealously watched; and when the Commons discovered in November, 1678, that its provisions had been infringed by the connivance of one of the Secretaries of State, a Member of their own House, they resolved, and acted upon the resolution, "that Sir W. Williamson (the person so offending) should be immediately committed to the Tower."[4] The King at once released his Secretary, and a controversy between the King and the Commons arose upon the original committal and the cause of it; but the Commons gained from the King a promise that all commissions whatever given to Papists, or reputed Papists, should be recalled.[5] The Documents printed in the Appendix prove the fulfilment of this promise.[6]

Observance of the Test Act carefully watched. Secretary of State committed to the Tower.

47. It must be observed, though not as a matter of surprise having regard to the protests raised in Parliament against the commissioning of officers, that there is no entry whatever upon the Commons' Journals during this reign of any provision of half-pay made by Parliament for

No allowance of half-pay granted by Parliament.

[1] See 10 Com. Journ., p. 223. [2] 4 Parl. Hist., p. 364.
[3] This was an exclusion from the Militia (English and Irish).
[4] 9 Com. Journ., p. 541. [5] Ib., p. 545. [6] Appendix XV.

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reduced or reformado officers. But the War Office Records show that such a provision was made by the King. On the arrival of the Earl of Dumbarton's Regiment from France the full pay of the regiment was settled up to the 14th August, 1678, and the officers were forthwith placed on half-pay—as a reformed or reduced[1] regiment—one month's half-pay (524*l.* 5*s.* 6*d.*) being issued in arrear. Later, a Warrant of 26th November, 1678 (countersigned Danby), addressed to the Paymaster-General, continued the half-pay in these terms:—"Out of such of our moneys as are or shall come to your hands for the use and service of a war against the French king, you pay half-pay, that is to say, 4*s.* a-day to each Captain, 2*s.* a-day to each Lieutenant, and 1*s.* 6*d.* a-day to each Ensign, as are already come over from that (French king's) service to serve us, for their present subsistence, until such time as we shall dispose of them into employments military, for a use and service of a war against the French king, and no longer."[2]

But granted by the King.

48. The grant of half-pay was only temporary, and hence it was necessary, as a provision for worn-out or decayed officers, on retirement, to permit the sale of commissions. A trace of the purchase system is found in the Duke of Buckingham's second speech to the House of Commons in answer to their charges against him. "I had a regiment given me," he said, "which was Sir G. Scott's, and, not knowing the law of England, I gave him 1500*l.* for it—no papists nor Irish in the regiment."[3] The warrant of Charles II.[4] (7th March, 1683-4) deals with the system as one established, and the assent of the Crown gave it legality.

The Purchase System established.

49. For poor soldiers there was no statutory relief, save that which was given by a temporary Act, passed in the year 1662, for the relief of those soldiers who had served Charles I. and II. in the *late* wars. This Act, 14th Chas. II. c. 9, threw the burthen of their maintenance on the poor rates, in analogy to the provisions of an earlier Act (35th Eliz. c. 4); but no other provision was made by Parliament for any soldiers in this reign. It fell upon the

Chelsea Hospital as provision for worn-out soldiers.

[1] See two Warrants of 10th August, 1678, Mis. Bk. 514, p. 457.
[2] Mis. Orders, 514, p. 100. [3] 9 Com. Journ., p. 293. [4] See same in Appendix XVII.

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King to devise some expedient for their relief; and, therefore, an asylum was founded at Chelsea as an hospital for aged, maimed, and infirm land soldiers, upon an estate vested in the Crown. The cost of the erection of this building, and of its future maintenance, were provided for by a poundage deducted from the pay of every soldier[1]—a principle for the sustentation of hospital accommodation (even when troops were upon active service[2]) that was continued for many years, and as to Chelsea abolished in the year 1847.[3] The first stone of Chelsea Hospital was laid on the 12th March, 1682; but the Hospital was not completed until 1690. The first warrant for the management of it bears date the 3rd March, 1691, and is granted to three civilians —to the Paymaster-General (Lord Ranelagh), a Lord of the Treasury (Sir Stephen Fox), and the Surveyor of Works (Sir Christopher Wren).

Old Administrative Departments, viz., Treasury, Secretary of State.

50. During the early years of Charles II.'s reign, the administration and government of the army rested in the hands of the Lords of the Treasury and of the Secretary of State. By a royal warrant of January, 1668-9, the King settled an establishment of troops, regiments, and garrisons, with all the charges to be paid in respect thereof. This establishment was under the care of these Ministers, with a direction that no alteration whatever should be made unless it had been previously approved either by the Treasury or the Secretary of State.[4]

Secretary at War's office created.

51. But the detail of the business arising from the maintenance of a standing army was from the commencement of the reign committed to a subordinate officer, ultimately styled the Secretary at War. It is said that Sir W. Clarke (who had served in the same office during the Commonwealth) was appointed "Secretary to the Forces" under date of 28th January, 1661. Mr. Locke's appointment to the same office bears date 5th June, 1666, and the form of it was the same as that of a *military* officer. He was "to follow such

[1] See Royal Warrants, 7th Mar., 1683-4, 17 June, 1684, in Appendices XVII., XVIII.

[2] See 23 Geo. III. c. 50, sec. 32.

[3] 10 & 11 Vic. c. 4.

[4] See Appendix XIX.

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orders as he should from time to time receive from the King, or the General of the Forces for the time being, according to the discipline of war." It was probably intended in the original institution of the office to create an officer wholly subordinate to the King or General without any *Parliamentary* responsibility—because, at the time of the appointment, *such* a responsibility was wholly unknown. Mr. Locke was a clerk in the Treasury or Secretary of State's office, and from his disbursements as Secretary at War which are given in the Appendix,[1] it would be presumed that his office "establishment" was insignificant.

Nature of Secretary at War's office.

52. From the date of his appointment, the Secretary at War signed documents "By His Majesty's command." Some definition of *his* official duties, as distinguished from those of the *General* in Chief Command (then the Duke of Monmouth) is given in the Sign Manual Warrant of 27th September, 1676, countersigned[2] by Mr. Secretary Williamson, and addressed to the Duke of Monmouth. The Secretary at War had committed to him "the cognizance and care of the appointment, the removal of quarters, the relief of any of our established troops or corps, and the sending of all convoys needful for our service;" and he had given to him "authority to quarter the troops in inns, &c." The warrant then states that His Majesty "would continue to issue some kinds of warrants and military orders which did belong to the office of our late General, and which he was wont to despatch and sign;" and it then proceeds thus,—that "to distinguish such warrants and orders from other affairs of our Crown passing our Signet and Sign Manual, our will and pleasure is that all such kinds of warrants and orders as formerly issued from George Duke of Albemarle, our late General, and (in regard to that office) which we continue to issue from ourself, shall pass our Sign Manual only, and shall be countersigned by the Secretary of our Forces as by our command."

Warrant separating his duties from those of General in command.

53. He was a *Civil* Servant of the Crown, and his duties were purely civil duties. It has been noticed by Lord

Purely civil duties.

[1] Appendix XX.

[2] Mis. Bk. 513, p. 204.

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Palmerston, after a *personal* examination of the War Office Records, that "from the date of this warrant there is no instance upon the War Office Records of any warrant or order signed by the King being countersigned by any Military officer —such countersign alone being always that of a Secretary of State, a Lord of the Treasury, or the Secretary at War."[1]

Paymaster-General of the Forces.

54. Another office was created by the King—analogous to the Treasurer of the Wars under the Commonwealth—that of Paymaster-General to the forces,[2] a purely civil employment, fulfilling when it was created, in 1662, the functions of a banker, holding and disbursing on order from the King the money needed in the course of the year for the pay of the Army. This money — probably 300,000*l.*[3] a year as the annual charge of the army in Charles II.'s reign—was issued to the Paymaster-General on Royal Sign Manual Warrant, countersigned by the Treasury. For all the money so received from the Exchequer the Paymaster-General was liable to account under the old rules of the Exchequer to one or other of the King's (two) Auditors of Imprest, and until his account was rendered to, and declared "even and quit" by, the auditors, the Paymaster-General was a debtor to the Crown for the amount of the original issue.

Sign Manual orders absolute discharge of the Paymaster-General.

55. It may be observed that while the money remained, as until William III.'s reign it did remain, the *sole* property of the Crown, to be used for any purpose *whatever* that the sovereign for the time being was pleased to direct, the Paymaster-General could at any time be discharged from all accountability to the Crown auditors by the act or authority of the Crown properly authenticated; but unless the Paymaster-General was so discharged, he had to account to them for all moneys issued to him.

Audit of Paymaster-General's ac-

56. In passing this account he had to produce, first, a Sign Manual Warrant duly countersigned, for every payment made by him; and, secondly, a receipt from the person

[1] Lord Palmerston's Memoir, p. 35.

[2] As to this office and the practice of it, see Rep. of Com. on Public Accounts, 1781-3.

[3] See 10 Com. Journ., p. 55.

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Accounts by Auditors of Imprest.

Payments "with" or "without" account.

named in the warrant. It was then, and still is, in the discretion of the Crown to order the issue of money to the person named, either as a *final* payment, and *without* his rendering any future account; or on account, and *with* a liability to render a future account to the auditor. In the latter case, this person became an "insuper" or sub-accountant, but the Crown at any time could discharge him from rendering this account.[1]

Army Agency.

57. The finance of each regiment rested with its colonel, as the recipient of all money issued for the regiment by the Paymaster-General, and who was responsible to the Crown both for the maintenance as well as for the discipline of the regiment. Many commercial or financial transactions had therefore to be attended to in the pay, clothing, and rationing of the men; and in these it was necessary that the colonel should be assisted by an agent in this country, if not in London, to whom the pay of the regiment could be issued, and by whom these financial and commercial duties could be discharged.

Antiquity of the System.

58. The agency system is said to have originated in an agreement made in 1662, but terminated in 1682, between the officers of the Guards and Garrisons and Sir S. Fox (then Paymaster-General), that he should receive twelve pence in the pound for all pay, and, in consideration of this deduction, that he should advance the pay of the regiment by a weekly subsistance.[2] The present agency system originated in the reign of William and Mary,[3] and the agent was then remunerated by a deduction out of the soldiers' pay, which continued until Mr. Burke's Act[4] threw the expense of agency upon the country.

Ordnance Department reorganized as a Civil Department.

59. The Ordnance Department existed, as it has been noticed, long before the reign of Charles II., but at the close of it (in July, 1683), a royal[5] Warrant was issued reorganizing the department as a *civil* depart-

[1] See 9th Report on Public Accounts, 29 Mar. 1783.

[2] Army and Ordnance Expenditure, 1850, p. 850. [3] 11 Com. Journ., p. 213.

[4] 23 Geo. III. c. 50. [5] See extracts therefrom in Appendix XVI.

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ment of the state, for the custody and supply of naval and Ordnance stores. Under this warrant the Master *General* (who previously had been usually styled the "Master[1]") of the Ordnance was to obey equally the orders of the King, Council, or Lord High Admiral. The average cost of the department in Charles II.'s reign appears to have been, for ordinary supplies, 60,000*l.*, paid in sums of 1000*l.* a week, and 2000*l.* for each quarter.[2]

Navy formerly more associated with the Ordnance than the Army.

60. For many years the Navy, if it be not so at the present time, was a larger consumer of Ordnance stores than the Army, and hence the Navy was more closely associated with the Ordnance Department than the Army—the extraordinary supplies of the Navy and Ordnance being on one occasion[3] voted together. The absorbing influence of the army is of modern growth, but it has carried this department away from the navy, to this extent—that the Secretary for War provides all Naval armament and warlike stores. The Ordnance Board represented *both* services in Parliament, and the presence of a Naval officer in the Councils of the department gave an assurance to the Royal Navy that its requirements would not be considered a matter of secondary importance.

The "Army" has absorbed the Navy element.

The Marine Service.

61. Perhaps it is unnecessary to observe that the Marines did not exist as a separate body of soldiers till the reign of William III. The first trace of any regiment for sea service dates from 1664, when the Admiral's regiment, consisting of 1200 men, was raised under the authority of an Order in Council of the 26th February of that year.[4] The men were "to be distributed with Her Majesty's fleet, prepared for sea." Other regiments—such as the Coldstream Guards—were drawn off for this service, and the Admiral's regiment was formed into the 2nd Regiment of Foot by William III.

Ordnance and Navy only could

62. Throughout the reigns of Charles II. and James II., whenever the Navy or Ordnance required carriages by land, then the justices, upon notice from the Admiralty

[1] 2 Com. Journ., pp. 305, 323; 9 Com. Journ., pp. 434, 497.
[2] 10 Com. Journ., p. 55. [3] 9 Com. Journ., p. 722.
[4] See Admiralty Orders, vol. ii. p. 553, and War Office Records.

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Impress carriages.

or Ordnance were forthwith to impress them at a statutory rate laid down by the Act.[1] Whenever either of these departments required ships, they had authority to impress them for the use of the Navy or Ordnance. No statutory authority whatever was given to the King, or to any one under the Crown,[2] to impress either carriages or ships for the use of the *army*, and any such authority so exercised during either of these reigns was wholly illegal.[3]

Government and Discipline under the Prerogative.

63. The *Government* and discipline of the Army was carried on solely under the prerogative powers of the Crown. From the Articles of War issued by Charles II. it will be seen that he assumed the authority of administering justice by courts martial, and of extending their punishments to life and limb, though this assumption of power within the realm in time of peace was clearly illegal.[4]

Courts-martial.

64. It was within the prerogative of the Crown to constitute courts of justice to act within the known and prescribed limits of the common law of the realm;[5] but the Crown had no power to set up a court for the declared purpose of judging its subjects by other rules, and thereby of awarding against them punishments extending to life, limb, or liberty. The old court of the marshal (the fountain of martial law, as Lord Coke[6] thought) had authority in contracts, or deeds of arms, and of war out of the realm,[7]—matters that could not be discussed or determined by the common law courts. Against his decisions there was no appeal save to the King in person, and therefore Parliament, from the earliest times, sought to protect the people from this tribunal.[8]

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[1] 14 Car. II. c. 20; 1 Jas. II. c. 11; 9 Com. Journ., p. 736.

[2] See 1668, Mar. 5, Report of Committee on Grievances, 5 Parl. Hist., p. 159; 10 Com. Journ., p. 693.

[3] 12 Car. II. c. 24. The War Office Records contain several entries of Warrants to impress carriages at 6*d.* a mile; see 1672, July 5 (Mis. Bk. p. 364), and 1673, Jan. ib. (512) p. 61.

[4] See 15. Parl. Hist. (Solicitor-General Murray's speech), p. 261. Mr. Charles Yorke's, p. 274.

[5] Chitty's Prerog., p. 75.

[6] 4 Inst., ch. 17, pp. 123, 125.

[7] 2 Hale, P. C., Bk. 2, c. 4.

[8] Vol. iii. Rolls of Parliament, p. 4206. Appendix XXI.

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65. Every General sent out to command an army for the suppression of rebellion held a commission from the Crown to execute martial law upon two distinct classes of offenders.[1] The first, the mutineers of his own army and camp; the second, the unfortunate rebels or enemies that might be captured in the war.[2] It was, I apprehend, against the power which the Crown by these commissions purported to delegate to General officers, to Lords-lieutenant, and occasionally to Municipal authorities, that the Petition of Right was directed, and all punishments inflicted even upon listed soldiers after the date of that enactment were absolutely illegal, unless, from war or public calamity, the common law courts were closed.[3]

Commissioners to execute Martial Law.

66. Both Houses of Parliament admitted the necessity of the speedy punishment of soldiers, but were at issue with the Crown as to the tribunal by which the offenders should be tried. These military courts, formed by a council of war, held themselves amenable to no authority save that of the king in person, violating thereby the ordinary safeguard to the pure administration of justice; Parliament therefore desired to place the army upon the same footing upon which it had placed the militia, viz., as amenable only to the *civil* magistrate for all offences committed, of which the punishment would properly extend to life or limb.

The Crown and Parliament at issue as to the Tribunal for the punishment of Soldiers.

67. The legal officer entrusted by the Crown with the administration of military law was the Judge-Advocate General, then styled the Advocate of the Forces, or Judge-Advocate. What his constitutional functions have subsequently become will be a subject for future consideration; but originally his duties were subordinate, though directly after the Revolution the practice commenced, and in 1705,[4] was established that he should take charge of the pro-

Judge-Advocate General.

[1] 16 Ry. Fœd., p. 279; ib. pp. 45, 245; 18 ib. pp. 254, 763

[2] 3 Rush. Coll., pp. 984, 1199. [3] 3 Rush. Coll., p. 76; 1 Hale, P. C., pp. 499, 500.

[4] "I send you (J. A. G.) sentence of a Court-martial, to be laid before the Queen, taking it properly to be your business." (Secretary at War—St. John—1705, in L. B., p. 133.)

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ceedings, and personally advise the Crown upon the sentences of Courts-martial. Until, therefore, Parliament had given its express sanction to the execution of military punishment, the discipline of the army must have been (of necessity, and from fear of the interference of Parliament, or the ordinary common law courts) lax, and the officers of the Crown have proceeded to act on the Articles of War at the peril, as Lord Conway feared, of being charged with murder.

During James II.'s reign Department unaltered.

68. In the reign of James II. there are few changes to record. In the first place it may be noticed that no alteration was made in the departments of the state that were charged with the administration of the army. The Ordnance Establishment and the regulations of 1683 were confirmed, and some trifling alterations made by warrants under Royal Sign Manual, countersigned by Sunderland as Lord President. Thus James[1] separated the saltpetre from other stores, and created a storekeeper for it; placed the tents, wagons, &c., in charge of the storekeeper; and, lastly, he added thirteen bombardiers and five petardiers to the officers of the Ordnance (at a daily pay of three shillings for the chief, and two shillings for ordinary men), the men being appointed by the Master-General, and placed under the firemaster.

Establishment of Guards and Garrisons.

69. From the Royal Sign Manual establishment of the guards and garrisons,[2] bearing date the 1st January, 1685, countersigned by Rochester and Sunderland,[3] it appears that the total number of men (exclusive of officers) to be maintained at an average cost (*in*cluding the pay of the officers) of 601,764*l.* 16*s.* 8*d.* was 16,482. The garrisons to be kept up were thirty-three in number—which with an allowance for pensions—entailed a further expense of 16,863*l.* upon the Crown.

[1] Royal Warrants of James II., dated 1686, Feb. 4, pp. 96, 99, 100; 1688-9, March 8; A. and Ord. Exp. (1849), p. 729; ib., 102 to 106.

[2] See a contrast as to the number for the forces in 1680, and in William III.'s reign, in vol. ii. of State Tracts, p. 669. As to the forces of James II. and Prince of Orange, see vol. i. pp. 59-61. The statement in the text is made from the original that was before me in 1859, but which is now not to be found. See Sir James Mackintosh's note, vol. ii. p. 85, as to the strength of James II.'s army.

[3] Abstract of James II.'s expenses, 10 Com. Journ., p. 55.

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70. The rebellion of Monmouth gave occasion for the employment of these troops in the West of England, and Articles of War were put forth for their better government. The rebellion was brought to a close by the capture of Monmouth on the 8th of July, and during its continuance it was exclusively confined to the West. However a warrant was issued on the 10th July, 1665, under the countersign of Sunderland, for the establishment of Courts-martial, to hold their sittings *in the large room* at the Horse Guards, for the trial of deserters, and of others for offences that would have been Political offences had not the offenders been soldiers. On the 20th of July the Court appears to have commenced its sittings, and sentences of death by hanging and of corporal punishment were found against the accused soldiers and officers.

Monmouth's Rebellion.

Articles of War, and trials by Courts martial.

71. Other trials were subsequently held, and the Warrant appears to have been treated as a standing or general authority—analogous to a commission of oyer and terminer—for the trial of any offenders that should be arraigned before the Court by order of the King or his Generals. In the Appendix,[1] the Warrant and the proceedings of the first Court-martial held under it are printed, and I have also selected a letter from the Secretary at War, which explains that the authority of the Articles of War put forth on the occasion of—ceased with—the Rebellion.[2]

Continuous sittings of the Court.

72. Parliament was sitting when these disturbances commenced, and it is curious that the War Office Records[3] show that "such officers as were Parliament men" had been summoned, by order of the King in a circular letter from the Secretary of War, to give their attendance there, in obedience to the King's command.

Secretary at War's circular to officers in Parliament to attend there.

73. James, as it is well-known, intended to supersede the provisions of the Test Act, and ultimately invited the army, though without success, to co-operate with him in this object.[4] After Parliament had supported

James II. desires to abolish the Militia and Test Act.

[1] See Appendices XXII. and XXIII., and 15 Parl. Hist., p. 275.

[2] Appendix XXIV. From a letter of the Secretary at War to the Duke of Albemarle, I gather that other Articles of War were issued for the better government of the troops encamped on Hounslow Heath. War Office Letter-Book, 1685, p. 10.

[3] Appendix XXV.

[4] 12 Rapin's 'England,' p. 111.

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him in suppressing the rebellion, he invited both Houses to set aside the Militia and to increase the standing army,[1] at the same time plainly informing them that in the latter force there were officers *not* qualified under the *Test* Act, whom it was his intention to retain in pay.

Resolution of the Commons to stand by the Militia and Test Acts.

74. The Commons were not less resolute in dealing with these suggestions than they had been when they came from Charles II.[2] *They* resolved to improve the *Militia*[3] and abide by the Test Act, and therefore desired the King to dismiss the Roman Catholics from the army, and offered to pass an Act of Indemnity (a measure that in later years[4] was annually passed to protect persons who had served the Crown without a legal qualification)[5] to protect these officers. The King did not think fit to accept this advice, and Parliament was not again consulted.

Irish Roman Catholics introduced into the English army.

75. From this period James endeavoured to recruit the ranks of the army from the Irish Roman Catholic population. The Irish were brought over from, and regiments were also directed to recruit in, Ireland. In one instance, six commanding officers, for refusing to accept forty Irishmen as recruits,[6] were ordered for trial before a court martial; but, the French Ambassador interfering, the proceedings were stayed, and they were dismissed from the service. The Roman Catholic feeling in some regiments was so rampant that the Protestant soldiers were looked upon as objects of reproach, and had to appeal to the King for protection.[7]

Illegal billeting practised by James II.

76. With so large a number of troops in pay, there was no alternative but to billet the men during the winter season; and throughout the reign of James II. the provisions of the statute law against billeting were

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[1] 9 Com. Journ., p. 756.

[2] During this session the Commons instituted a Committee of members of their own House—to examine into the public moneys voted for the Disbanding the Army in 30 Car. I. and 31 Car. I. See 9 Com. Journ., p. 752. See also in William III.'s reign, 10 Com. Journ., pp. 121, 222 et seqq.

[3] 9 Com. Journ., p. 758.

[4] 140 H. D. (O. S.), 3 May, 1819.

[5] 9 Com. Journ., p. 757.

[6] See War Office Letter-Book of 1685 to 1689, pp. 95-103, 105; History of the Desertion, pp. 42-3.

[7] Ib., p. 113.

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violated. The War Office Records show this to have been the case. In April, 1688, the King ordered a return to be sent up to him of all the billeting accommodation at Portsmouth and Gosport; of the number of beds and the ability of the housekeepers to quarter soldiers; and upon the receipt of it he sent the following order to the lieutenant-governor:—

"His Majesty, having taken into consideration your letter to me of the 29th of April last, containing an account of the beds in the public-houses at Portsmouth and Gosport, has commanded me to signify unto you his pleasure that so many soldiers that are quartered in those places as double the number of beds, two men being allowed for each bed, do not any longer continue to pay their quartering; but that all others that are quartered there above that number pay eightpence per week for the necessaries usually furnished unto them, which you will please to communicate to the commanders of the two battalions now in garrison there for their guidance and directions."

At Portsmouth.

77. In September the people of Hull appear to have remonstrated with the King upon an order which he had sent down to the mayor, that "where there are not a sufficient number of public-houses for quartering the said battalion and companies, his Majesty does expect from you on this occasion, and on all others where the number of the garrison shall require it, that, notwithstanding the late declaration, you take care that the former practice and usual agreement be continued, whereby all the garrison exceeding the number of 300 men, be lodged in *private houses*, paying eight-pence a week a man for such necessaries as have been heretofore provided for them;" for the Lord President of the Council wrote to the mayor, by his Majesty's especial command, to see this order carried out.

At Hull.

78. The King adopted the experiment of governing the kingdom by a standing army, and lost his throne. "Thus (says the author of 'The Desertion,'[1] in reference to the dispersion of his forces on the arrival of

King governed by Standing Army, and so lost his throne.

[1] Hist. of the Desertion, vol. i. State Tracts, p. 94.



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the Prince of Orange), the flying of the brave army may be a lesson to *all* princes to trust more to the *hearts* of their people than to *any forces* without them. And if all this army could not or would not maintain him in his irregular way of government, what forces will be requisite to restore him against the three estates and the body of the nation?"

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## CHAPTER V.

### THE BILL OF RIGHTS AND ACT OF SETTLEMENT.

1. DURING the interregnum the "peers of the realm" assumed the functions of the Crown, and in the affairs of the army took such measures as, in their judgment, would be most likely to free their fellow-countrymen from the evils with which the Army under James II. had threatened them. When Lord Faversham found the forces under his command reduced to 4000 men, he issued an order for the disbandment of the Army. This order the peers modified by re-assembling all the *Protestant* officers and soldiers, and providing for their pay and subsistence;[1] while, on the other hand, they issued orders for all officers and men who were Irish in extraction or Roman Catholic in religion, to lay down their arms.

Peers of the Realm expel Roman Catholics and Irish from the Army.

2. The number of Irish appears to have been considerable. The place fixed for their rendezvous was the Isle of Wight. They were there held under the guard of the governor, Sir Robert Holmes, until convoys could be provided for their transport to Ireland.[2]

Irish sent to the Isle of Wight and thence home.

3. The Army being thus purged of those who had been brought into it for the furtherance of the evil designs of the late King, a proclamation[3] was issued by the Prince of Orange, recalling all other officers and men to the ranks, and promising that their pay and subsistence should be regularly provided for. The original orders for carrying out these measures, and for substituting the Dutch for the English Guards at Whitehall,[4] are entered in the War Office Records, and in the Appendix will be found copies of those which appear to me to be of interest.

Remainder of the Army reformed by Prince of Orange.

[1] Appendix XXVI. [2] Appendix XXVII. [3] Appendix XXIX. [4] Appendix XXVIII.



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Constitutional basis on which the Standing Army was placed in relation to the Crown and to Parliament.

4. It was under these circumstances that the Statesmen of that period had to consider the course they should adopt in regard to a Standing Army. To disband it altogether was impossible, for the late King was seeking aid from France to recover his lost throne, and war of some kind was inevitable. The people had experienced the evil of two systems,—of an Army of Plebeians exclusively under the Parliament, and of an Army of Cavaliers exclusively under the Crown; and therefore the problem which presented itself was,—how, without risking a divided allegiance, the Army could be placed equably between the Crown and Parliament, that the interest of the one should not so prevail as to disturb the influence of the other.

Plan of effecting the same by increasing the functions of Parliament.

5. Now this object was to be attained—not by destroying, but by strengthening the existing departments or powers of the *Crown*, and, at the same time, by adding to the legitimate functions of *Parliament*. These ends were brought about, so far as need be referred to here, by three separate measures:—1. By laying down certain fundamental principles in relation to the Army by the Bill of Rights and Act of Settlement. 2. By placing the pay of the Army under the control of Parliament, or more especially of the House of Commons. And 3, By granting *to the Crown* statutory powers for the *Government* and discipline of the Army.

Other guarantees against the encroachments of the Crown and Standing Army.

6. Other statutory guarantees against the encroachments of the power of the Crown and of the Standing Army were added, which will be explained in later pages; but the greatest security was and still is to be found in the Constitutional doctrine developed at the Revolution, which made every Minister of the Crown personally responsible to Parliament for his own conduct, and for the acts of the Crown taken upon his advice. This agency of governing the kingdom by responsible ministers applies to the Army as well as to the civil Government, although for many years some few Politicians and many Soldiers were ready to contend that the Crown, without the intervention of *any* responsible minister, might use the Army for *any* purpose, and govern and command it in *any* manner that the will of the sovereign, for the time being, should direct. There is no good foundation, as will

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be seen, for any such theory. The Army, as part, or rather as the instrument of the State, must be under the ordinary rule of law, whether as applied to the prerogatives of the Crown or obedience to the civil magistrate. These subjects do not, however, come under notice in the present chapter, which will embrace the consideration of the fundamental principles laid down in the Bill of Rights and Act of Settlement with reference to the Standing Army.

7. These Statutes expressly provide that all sovereigns claiming the throne of England under these Limitations shall hold it upon these two conditions in relation to the Standing Army. The first, which leaves Parliament to decide what number of men shall be maintained by the Crown as a Standing Army within the Kingdom in *time of peace;* and the second, which declares that none but *Native-born* subjects shall hold any Military Command.

Conditions under the Bill of Rights and Act of Settlement upon which the Throne is held.

I. As to the first condition, which rests upon the Bill of Rights.

8. The 1 William and Mary, c. 2, (sess. 2), sets out, by way of preamble, "that James II., by the assistance of evil counsellors, judges, and ministers, employed by him, did endeavour to subvert and extirpate the Protestant religion, and the laws and liberties of the kingdom, by (*inter alia*) raising and keeping a standing army within the kingdom in time of peace, without the consent of Parliament, and quartering soldiers contrary to law," and then, "for the vindication and assertion of the ancient rights and liberties of the people," declares that the raising or keeping a standing army within the kingdom, unless it be with the consent of Parliament, is against law. The Act sets forth a tender and acceptance, by William and Mary, of the Crown upon this basis, and enacts, by way of declaration, that all these rights and liberties shall be firmly and strictly holden and observed by the Crown, and that all officers and ministers whatsoever shall serve their Majesties and their successors according to the same in all times to come.

1st Condition.

Parliament to assent to the numbers of the Standing Army.

Tender of the Crown on "Conditions."

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An annual compact between the Crown and Parliament as to the number of the Standing Army.

9. From the votes in supply being taken annually, or for a shorter period,[1] (a subject that will be referred to at greater length in the next chapter), a parliamentary compact[2] is thereby made with the Crown as to the number of men that shall be retained in arms during the year or period for which the supply is granted. If ever the Crown should intentionally retain in arms a larger number of forces than has been agreed upon, the minister by whose advice this course had been adopted would—like Lords Clarendon or Danby—be open to impeachment.

The preamble of the Mutiny Act the evidence of this compact.

10. The evidence of this compact is to be found in the preamble of the Mutiny Act, which states the purpose for which the army has been maintained, and since 1721 (subject to some inaccuracy) the number of men which the Crown and Parliament have adjudged necessary to be continued on foot. The numbers have not, however, always been accurately set forth.[3] In the year 1858 there were 15,000[4] men in England (the depots of regiments held under the 33 George III. c. 52) not enumerated in the preamble, and in 1860 the Estimates provided for 1907 in excess of the number stated in that year's Mutiny Act. It must also be mentioned that the officers and men of the Ordnance[5] Corps (small in numbers before recent years) were not, until 1855-6, included in the men mentioned in the preamble.

No obligation on the Crown to keep up all the number voted.

11. But although the number of men is thus agreed to, it has been held by competent authority,[6] and the House of Commons accepted the statement, that no obligation rests upon the Crown to maintain the army to

[1] In 1817, the Estimates were voted for six months only, and *two* Mutiny Acts were passed in that year. See 35 H. D. (O. S.), 1078 and 1136; 36 ib. pp. 516-37. In 1828, two votes were taken, but only one Mutiny Act passed, 18 H. D. (2nd) 627. In 1832, two Mutiny Acts were passed. See notes to Table of the numbers of the Standing Army in Appendix M.

[2] See Debate, 29th March, 1734, 9 Parl. Hist., p. 522.

[3] See Mr. Wynn's statement, 37 H. D. (O. S.), p. 867; Lord Palmerston's, 18 H. D. (2nd), p. 627; Lord Panmure's, 140 H. D. (3rd), p. 2224.

[4] Compare Mutiny Act of 1858 with Mutiny Act of 1859.

[5] Report on Ordnance Expenditure, 1849, p. 8.

[6] Lord Palmerston, 121 H. D. (3rd), p. 644.

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its full strength. All the vote does is to give the Crown authority to employ in the army, if it sees fit, that number of men, and *no more*,[1]—a matter worthy of notice, as pointing to a distinction which some politicians have sought to establish between the Militia and the Standing Army. For as the Militia is raised under statutory authority, and, if need be, by conscription, an obligation is said to rest upon the Crown to maintain that force at its *full* strength.

No augmentation without the previous sanction of Parliament.

12. However, to recur to the question of compact; it has given rise to a constitutional practice for the Crown, whenever war and public disorder are threatened, immediately to communicate with both Houses of Parliament, stating in the message the apprehension of these evils, and desiring their support. In the earlier instances of 1702[2] and 1715[3] the Crown simply apprised them of the circumstances, nothing being said by the Crown or by Parliament on the subject of augmenting the forces; but in 1718, upon the threat of invasion from Spain[4] being communicated to Parliament, his Majesty was desired, in answer to the message, to give the necessary orders to strengthen and augment the forces. In 1726 the King's message apprised Parliament of the hire of foreign troops,[5] under a treaty that was then laid upon the table. Great opposition therefore arose against the Ministry, but the House of Commons undertook to make good the engagements of the Crown under the treaty and to raise supplies for the increase of the forces.

A.D 1734.

Augmentation during the Election of a New Parliament.

13. It will, I think, be found that the Crown never made any application for the positive assent of Parliament to the augmentation of the forces until the year 1734. The circumstances of that epoch were unusual. Parliament was about to expire, and in the interval the increase to the Standing Army must (if at all) be made before a new Parliament could be assembled. George II. therefore expressed a hope that he should be supported by Parliament in making

[1] 9 Parl. Hist., p. 542. [2] 13 Com. Journ., p. 870. [3] 18 Com. Journ., p. 232.
[4] 19 Com. Journ., pp. 42 and 127. [5] 20 Com. Journ., p. 708.

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augmentations, promising that, whatever augmentations were made or services performed, *an account thereof should be laid before the next Parliament.*[1]

Constitutional objections to the measures of 1734.

14. Great opposition, upon constitutional grounds, was raised in both Houses; but ultimately addresses were carried, giving to the Crown authority to augment the forces. It was objected (and followed up by protest in the House of Lords), 1. That, as the assembling of a new Parliament rested solely with the Crown, it would be putting an absolute, because unlimited, power in the hands of the Crown, and further that during the elections these forces might be used for purposes of intimidation. 2. That the power should be sought for and given in the defined language of a statute, and not by resolution.

Answered by Lord Hardwicke.

15. Lord Hardwicke pointed out that it was admitted by both sides of the House that *during* the *interval* of Parliament, the Crown has *by law*, and without any *previous* authority from Parliament, a power to provide for the safety of the kingdom; and he contended that neither the power sought for, nor the manner of obtaining it, were unconstitutional; for though the Crown cannot by law raise or keep a standing army in this nation in time of peace with*out* the consent of Parliament, yet that as no law directs *how* that consent was to be obtained, it might, therefore, be obtained as well by vote or address from each House as by Act of Parliament. The practice must, therefore, be considered as settled, that the Crown does not disturb the compact annually made by increasing the number of the standing army without the previous sanction of Parliament.

Commons jealous of the power of the Crown to raise Forces.

16. As the power of raising men rests with the Crown, it has always been narrowly watched by the Commons. Thus, in 1788, when it was deemed expedient to change the Civil status of the Ordnance artificers by enlisting them as Soldiers, the measure was challenged by Mr. Fox[2] as an augmentation of the army without the assent of the Crown, and therefore as unconstitutional.

[1] 9 Parl. Hist., pp. 520 to 598; 22 Cm. Journ., p. 297. [2] 27 Parl. Hist., p. 167.

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17. The principle which requires the assent of Parliament to the maintenance of a Standing Army applies equally to Volunteer as to paid troops. It has been shown in an earlier chapter that the Militia Acts of Charles II.'s reign required that the Trained Bands should cease after a certain date, though it is not less certain that they did not cease,[1] and that their continuance on foot gave confidence to their fellow citizens, and strength to the executive government, in the rebellions of 1715 and 1745. However, when, in 1778, the Crown openly invited aid—in money and in voluntary service—from the people, through advertisements and public meetings, but not through the agency, or under sanction, of Parliament, it was time to state the objection that these forces would (if raised) be a violation of the Bill of Rights.

The same principle applicable to Volunteer Forces.

18. The Ministers justified these proceedings; and though supported by the House of Commons, so that no adverse division was taken against them,[2] yet the opposition met with this success, that the Ministry, in the following year, introduced a bill (founded upon a principle enunciated in an earlier Act) to *authorise* Lords Lieutenants to accept the service of Volunteers, and to attach them in companies to the Militia. The bill was accepted by Parliament, and passed as the 19 George III. c. 76. It can therefore be no longer questioned that the assent of Parliament *is* needed to the continuance of *any* armed force within the realm in time of peace.

First disputed, but ultimately conceded by the Ministers.

19. The numbers of every force, except the Volunteer force, are strictly limited by the Act under which the force is raised; but Parliament has reposed such confidence in the patriotism of those citizens who serve as Volunteers, as to impose no limitation upon *their* numbers.

Number of the Volunteer Forces unlimited by Parliament.

20. Obviously the Bill of Rights protects the people from the introduction of foreign troops into the kingdom without the assent of Parliament. Even with such

No Foreign troops to be employed

[1] Petition from Barnstaple (1689); 10 Com. Journ., p. 344.

[2] 19 Parl. Hist., p. 692; 36 Com. Journ., p. 615; 31 ib., pp. 83, 97, 122.

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without the sanction of Parliament.

assent the Crown has neither the power to punish those troops by Court-martial, nor to billet them upon the innholders, and Special Acts have been passed for these objects when such troops have been brought here. But in the year 1775 Hessian troops, the electoral subjects of George III., were sent, without the assent of Parliament, to garrison Gibraltar and Minorca. In both Houses this measure was severely canvassed by the Opposition as an absolute infringement of the spirit and intention of the Bill of Rights. The Ministers stood upon the prerogative rights of the Crown to employ troops *out* of the kingdom, and in time of war, deeming the rebellion in America to be a war; but, not to stand on the legality of the measure, Lord North offered to bring in a bill of indemnity—an admission in favour of the Opposition, that foreign troops ought never to be employed in any part of the British dominions without the previous sanction of Parliament.[1]

A.D. 1794. Landing of the Hessians in the Isle of Wight.

21. Again in 1794, the landing of the Hessian troops in the Isle of Wight for re-embarkation abroad, gave rise to strong protests in both Houses as a manifest infringement of this Constitutional Law. The justification attempted for the measure was, that it was *temporary*—that the fact of their landing was immediately communicated to Parliament—and that the prerogative in time of war was not affected by the Bill of Rights.[2]

II. As to the second condition, which rests on the Act of Settlement.

By Act of Succession Foreigners excluded from any command in the Army.

22. The 12 & 13 William III., c. 2, declared it to be requisite and necessary that some *further* provision should be made for *securing* our religion, laws, and liberties, and then enacts that no person born out of the three kingdoms, or the dominions thereunto belonging (although he be naturalized or made a denizen), except such as are born of English parents, shall be capable (*inter alia*) to enjoy

[1] See Parl. Hist., pp. 798 to 831, and at p. 1330.

[2] See Debates in 36 Annual Register, pp. 198 to 205; 30 Parl. Hist., pp. 1310, 1363, 1424, 1438; 31 ib., p. 1.

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any office or place of trust, either civil or military, from the Crown.

23. To preserve this provision entire and inviolable, the 1st George I. (stat. 2), c. 5, enacted that no person should be naturalized by Parliament unless this clause was inserted in the bill presented to either House. This provision therefore (though only applicable[1] to officers) was throughout a long series of years and of statutes treated as one of the fundamental laws of the realm.

Confirmed and enforced by 1 Geo. I., c. 5.

24. As the Sovereign in William III.'s case was, and as every future Sovereign of these realms has been, connected by ties of consanguinity with foreigners on the continent of Europe, the precaution was not a needless one of prohibiting the admission of Foreigners into places of military command within these realms. In the impeachment of Lord Arlington the employment of *one* foreigner was looked upon as a discouragement to the noblemen and gentlemen of England—who have never been wanting in readiness or in ability to serve the country; and the employment of foreigners in such numbers as the Crown should see fit might have proved—as hereafter it *may* prove—a substantial grievance, if not a National peril.

The Foreign kindred of the Sovereign rendered this provision needful.

25. The first occasion in which this fundamental principle was partially relaxed was in the year 1756. The necessity of raising foreign troops, either from the unwillingness to enter into military service or the paucity of the native population, appeared to Lord Chatham's Ministry to render it expedient so to intrench upon this provision of the Act of Settlement as to employ foreign Protestant officers with such troops *in America*. A bill was accordingly introduced for this purpose, which underwent considerable amendment in the House of Commons,[2] was opposed strongly in the House of Lords,[3] but became law as the 29th Geo. II. c. 5. The number of officers to be appointed was limited by the Act to fifty, and their rank to that of Lieutenant-Colonel. The amendments and protest recorded on the Journals of the Houses prove that the objections entertained against the measure were

A.D. 1756. Principle partially relaxed.

[1] Appendix XXX.

[2] 27 Com. Journ., p. 467.

[3] 15 Parl. Hist., p. 698. See also Mr. Grey's speech in 1794, 30 Parl. Hist., p. 1363.

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based upon the inexpediency of infringing upon a great Constitutional Principle for the doubtful advantage of admitting Foreigners into the Military service of the Crown though restricted to America.

A.D. 1844. Principle entirely abrogated, and any Command in the Army may be given to Foreigners.

26. However a great change of opinion has manifested itself upon this question, and these feelings have entirely ceased to influence the Legislature, for in 1844 this provision in the Act of Settlement and the enactment in 1st Geo. I. were absolutely repealed by the 7th and 8th Vict. c. 66. Under this Act an alien may obtain a certificate of naturalization from the Home Office, and *foreigners* so naturalized may, without limitation as to *numbers*, be appointed to *any* command in the army.

As to Foreign Soldiers.

27. With regard to foreigners entering the army as private soldiers, there was no statutory prohibition against their enlistment until the year 1837; indeed, the War Office Records show that the ranks of our army have at some periods of our history been largely recruited by them. A limitation was, however, imposed by the 1st Vict., c. 29, of one foreigner to every fifty native-born subjects in a regiment. The Act also renders it necessary to obtain the previous assent of the Crown "signified by the Secretary at War" to such enlistment, and declares that no such soldier shall be commissioned as an officer by the Crown.

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# CHAPTER VI.

## THE PAYMENT OF THE ARMY BY PARLIAMENT.

1. THE Commons, during their first session in William and Mary's reign, proceeded to the settlement of the revenue, and to the grant of a civil list, "for the constant necessary charge of supporting the Crown *in time of peace*."[1] Having agreed upon a total sum (1,200,000*l.* per annum) they referred it to a committee, to consider and report to the House "what sum may be necessary to allow by the year for a charge of a summer and winter guard at sea, *and guards and garrisons by land*,[2] and the office of Ordnance in time of peace, *out* of the 1,200,000*l.*" The sums of 200,000*l.*[3] for the guards and garrisons and of 22,600*l.* for the ordnance (in time of peace) appear to have been fixed upon by resolutions of the House, but no clauses of appropriation in any Subsidy Act ever gave the force of law to the resolutions.

Settlement of the Revenue and grant of a Civil List.

Specific sums for Guards and Garrisons to be paid thereout.

2. The time of peace was not then at hand, for the war in Ireland had commenced, and that against France was soon to be declared. The first estimate of this reign, presented to the House on 25th March, 1688,[4] was "for the charge of troops to be employed in the service of Ireland, computed for one year, commencing the 1st March, 1688-9," and the second "for the ordnance," amounting together to 714,117*l.* 6*s.* 4*d.* The Commons divided the vote into two periods of six months. The second period being voted in case the war should be then continuing. The "extraordinaries" of the army, then termed "contingencies," are noticed on the journals, and even at this early period gave rise to controversy. Throughout the war the Commons continued to provide by annual estimate for the troops employed in it.

Estimates for war in Ireland.

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[1] 10 Com. Journ., pp. 53, 55.

[2] These words in *Italics* were inserted as an amendment in lieu of the words "and of forces" in the original resolution. 10 Com. Journ., p. 56.

[3] 10 Com. Journ., p. 80.

[4] Ib., pp. 57, 61.

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War against France.

3. The war against France was declared at the instance of the Commons, and upon their assurance to support the King in such "a parliamentary way as should enable him to support and go through the same."[1] On the 1st April, 1690, they voted a supply to the King for "public occasions—in prosecuting the war against France, and reducing of Ireland with speed and vigour;"[2] and in October a detailed list of the forces which the King thought necessary to maintain during the next year was laid before the House, with a declaration, "That no more thereof should be used within his own dominions than were absolutely necessary."[3] The estimate presented by the King was accepted by the Commons upon a resolution, "that a *supply be granted to* their Majesties for maintaining an army of 61,836 men, in order to the entire reducing of Ireland and the vigorous carrying on the war against France."

A.D. 1690.

Estimate of the forces, with promise not to employ them in England.

Distribution of troops stated, and separate establishments voted.

4. The same course of proceeding was adopted in the following year, with an intimation from the Throne that "how these forces (64,924 men) shall be distributed his Majesty hath not yet resolved; but that, howsoever, the King will keep no more of them in his own dominions than what he shall judge absolutely necessary for their security,[4] and the rest he shall transport beyond the seas, in order to annoy the common enemy, where it may be more serviceable to them." The votes of supply were not, however, proceeded with until this "distribution" had been laid before the House,[5] the Committee then commenced its sittings, settled the amount of pay that the officers and men should receive, and the number of men to be employed for service in Ireland.

English establishment voted with certain alterations.

5. With regard to the forces in *England* the Commons required further information from the Crown, and when this was furnished to them the Committee of Supply voted the number of men[6] for *each* of the several establishments (Danish, Dutch, and English) that had been laid before the House, with certain resolutions, of which two only need be mentioned here:—First, "That the establishment of their Majesties' garrisons and forts for the year 1692 be paid out of

[1] 10 Com. Journ., pp. 90, 94, 101. [2] Ib., p. 362. [3] Ib., p. 431. [4] Ib., p. 527. [5] Ib., p. 557. [6] Ib., pp. 565, 606.

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the *public revenue*; and, secondly, that 22,000*l.*[1] be deducted out of the ordnance estimates in consideration of the forces remaining in England, Ireland, Scotland, and the West Indies."

6. Having thus shown the "origin," it would be tedious to trace in detail the development of a principle which has since become part of our constitutional law,—viz., that the Crown has, first, a civil list for the payment of fixed charges, and for the maintenance of its Imperial dignity; and, secondly, other supplies voted for specific objects (one of which is the maintenance of the army) in the disposition of which grants for these exclusively National purposes, the Crown is a trustee, and for the abuse or misappropriation of these grants the Ministers are responsible to Parliament. "The Revolution," said the late Sir James Mackintosh,[2] speaking in the House of Commons, "amongst its other benefits and blessings, was the era of a new system in the history of our finance, for it was not until then that the system was established of appropriating all parliamentary grants, by the authority of Parliament, to services previously approved by Parliament, which gave reality and energy to all the ancient constitutional principles respecting the power of the purse, created a constant and irresistible control over the public expenditure in this House, and ought to be regarded as the most important reform in the practice of the British constitution which has been effected in modern times. Since that happy period, every part of public law and parliamentary usage on the subject of finance is consistent and intelligible. We have only to open the journals of this House to comprehend the constitution."

The result, a specific appropriation of supplies and a division between Civil and Public expenditure.

7. By these constitutional arrangements the powers and functions of the Crown and Parliament, in respect to the pay of the army, are placed upon an *even* balance. In voting supplies a Popular Assembly invariably inclines towards liberality, and it could be shewn

Balance of power between the Crown and Parliament as to the Army.

[1] No similar deduction on account of the 200,000*l.* allowed for guards remaining in England appears to have been made.

[2] 34 H. D. (O. S.), p. 537.

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that the interference of the Commons[1] with the rules laid down by the Crown, has on more than one occasion tended largely to the increase of the public burthens. The Commons themselves soon found it to be necessary to put some restraint upon their own powers; and in the session of 1706, a great number of petitions from persons claiming arrears of pay as officers, or making some other demand upon the public (too often promoted by their friends in Parliament) coming before the Commons, the House saw fit to lay down this fundamental rule:—"That they would receive *no* petition for any sum of money relating to public service, but *what* is recommended from the *Crown*."[2] Therefore no grant can be originated in the House of Commons until the Crown has, through one or other of its responsible Ministers, signified its assent and recommendation.[3]

No Parliamentary grant can be made without the assent of the Crown.

8. In 1834 the late Lord Ebrington, in apparent forgetfulness of this rule, moved, as an amendment upon the Secretary at War's Estimate, that a sum not exceeding 6500*l.* be added to the charge of the pay of general officers. The Chairman of the Committee (Mr. Bernal) immediately interposed between the noble lord and the House,

This rule was enforced in 1834.

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[1] See 37 H. D. (O. S.), p. 758, and 38 ib. p. 383. The result of the alteration suggested, was that 634 widows (who had remarried) were brought back to the pension list, at an annual cost of 29,436*l.* Another alteration brought upon the list 223 widows, at the average annual cost of 9,535*l.* The Finance Committee of 1828, recommended a return to the old rule of the Secretary at War's Office, and the Royal Warrant of 7th July, 1830, was issued (see 10 H. D. (3), p. 497).

Lord Castlereagh pointed out to the House of Commons that their interference with the *details* of Army Administration, which had then hitherto been left to the Secretary at War, invariably added to the cost of the army. Enlistment had been left in the hands of the Crown, until Mr. Windham, by experiments in legislation upon limited enlistments, added, as some think, 1,300,000*l.*, and as others admit, 500,000*l.* per annum to the Army Estimates.

[2] 3 Stats., pp. 167, 194, 242.

[3] RESOLUTION OF THE HOUSE OF COMMONS, 19 FEB., 1821:—

"*Resolved*,—That this House considers it essentially useful to the exact performance of its duties as Guardians of the Public Purse, that during the continuance of Peace, whenever Parliament shall be assembled before Christmas, the Estimates of the Navy, Army, and Ordnance Departments should be presented before the 15th January then next following, if Parliament be then sitting; and that such Estimates should be presented within ten days after the opening of supply, when Parliament shall not be assembled till after Christmas."—76 Com. Journ., p. 87; and see 25 Parl. Hist., p. 1044.

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by deciding that the Committee had no power to augment the estimates submitted to them by his Majesty's Government; such a proposal was not only without precedent, but against the orders which regulated their proceedings.[1]

The Army look to the King, and not to Parliament.

9. It is worth notice that this motion drew forth from the late Lord Hardinge (then sitting as Sir Henry Hardinge) an expression of his views on the part of the army, upon the subject now under consideration. He is reported to have spoken thus:—"Although he fully agreed in the substance of the noble lord's motion, he could not but object to the form in which it came before the Committee. The *King*, and *not* that *House*, was the disposer of grace, favour, and reward to *the Army;* and he should object to the noble lord, or any one else, calling on them to confer rewards which could only be obtained by means of his Majesty's pleasure. The Estimate should have been submitted by command of the King, and not until his pleasure respecting it was first ascertained. The same course ought to be taken before any reductions were proposed, for it was of the utmost importance that the army should look up to *no authority but that of the King.* It was by his Majesty's direction that punishments were inflicted, and by him alone should rewards be conferred. This was the constitutional doctrine."

The payment of the Army left entirely to the Crown.

10. These remarks lead up to another important rule, which is, that though the supplies are voted to the Crown for the payment of the army, it rests solely in the breast of the Crown to determine whether the pay of any individual officer or soldier shall or shall not be issued to him. "The Crown," said Lord Kenyon,[2] "has the absolute command of the army. It is true that Parliament has provided a sum of money, but that is to be distributed by the King. The money is under his control until it is paid out. The King may not take it for his own use, but he may prevent it from being paid to a person whom he deems not entitled to receive it." A judgment and the procedure under it that remind the reader of a passage in Mon-

[1] 21 H. D. (3rd), p. 1398.

[2] Peake, N. P., p. 176.



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tesquieu:[1] "Honour—a thing unknown in arbitrary governments—is the prevailing principle in monarchies. Here it gives life to the whole body politic, to the laws, and even to the virtues themselves."

No Action at Law can be brought for pay, &c.

11. No suit or action, therefore, can be brought against the Crown or its ministers,[2] for the recovery of pay, pension, or other grant for military service. These grants range themselves under that class of obligations described by jurists as imperfect, which want the "*vinculum juris*," although strong in moral equity and conscience. Their performance is to be sought for by petition, memorial, or remonstrance, not by action in any court of law.[3] To object to an application to the King as precarious in result, is to suppose (said the great Lord Somers) what is not to be supposed in law. It is a supposition contrary to the principles upon which the English constitution is framed,[4] which depends upon the honour and justice of the Crown.[5]

Commons warned against interference with the Ministers of the Crown in settling claims.

12. The House has occasionally been invited to review the decisions of the Secretary at War on questions of pay and allowances, at the instance of a claimant; but, so recently as 1857, Lord Palmerston, on resisting such a motion, and speaking to the Commons, said, "I warn them that if they commence revising the decision of the War Office upon the claims of individual officers, they will embark upon a sea of troubles to an extent of which, I am sure, they can have no conception. One great department of the War Office is daily and constantly employed in considering these personal claims. It forms an immense mass of business, and if the House of Commons erects itself into a tribunal of appeal against decisions of the Secretary for War upon claims of paymasters and regimental officers, I can assure the House that a large mass of

[1] Bk. III. c. 8. [2] Gidley *v.* Lord Palmerston, 3 Bro. and Bi., p. 275.

[3] 3 Chief Justice Tindal in Gibson *v.* East India Company, 5 Bing., N. C., p. 274.

[4] The Banker's Case, 14 Howell's State Trials, p. 1032 et seqq.

[5] The expediency of this rule Chief Justice Tindal goes on to justify; and not many years since, several hundred actions were threatened, and upwards of a hundred actions commenced, against a Public Department, by plaintiffs who had no money to answer any costs, and by a subscription got money to issue writs. A bill appears to have been introduced, to give a remedy for the recovery of pay, &c., in the year 1699, but not proceeded with. See 13 Com. Journ., p. 161.

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matter will have to be printed which nobody will ever read. I hope, therefore, the House will not encourage these motions."[1]

13. But if the Commons, by a rule of their own House, are prohibited from granting any increase of pay to the army without the prior assent of the Crown, the Crown is precluded, from the absolute necessity of the case on the one hand, and constitutional rule on the other, from granting such increase until voted or sanctioned by the Commons.

The Crown cannot increase the pay of the Army without the assent of Parliament.

14. A small increase of pay was granted in 1792—provided for in the estimates of the following year—and escaped with little censure;[2] but in the year 1795, the price of provisions being unusually high, the Secretary at War, during the sitting of Parliament, granted an extra allowance of bread and meat to the men—the legality of which was at once challenged in Parliament. Such a proceeding on the part of the Ministers could not, it was said, be otherwise accounted for than from a desire to establish a precedent, authorising them to raise money without applying to Parliament. It was calculated to make an impression on the soldiery, unfavourable *to Parliament.* They would be taught to rely on the generosity of the Crown, preferably to that of the Nation and its Representatives, and would of course carry their attachment to those whom they looked upon as their best friends and protectors.

A.D. 1795. Debate thereon in the Commons.

15. Mr. Pitt sought to exculpate the Ministry by representing the *relief* given as *temporary*, and arising wholly from the circumstances of the moment.[3] It would of course, he doubted not, be sanctioned by Parliament. This was far from being a satisfactory answer. "No principle," said Mr. Francis,[4] "was clearer in the English Constitution, and especially in the formation of the House of Commons, than its exclusive disposal of the nation's money: the Crown had not the most distant right to participate in this prerogative; much less was it entitled, from its sole authority, to distribute largesses

[1] 145 H. D. (O. S.), p. 447.
[2] 30 Parl. Hist., p. 491.
[3] Ann. Reg., pp. 170 and 215.
[4] 30 Parl. Hist, p. 215.



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to the army. This was not only an usurpation of the rights of Parliament, but a violation of them for the worst purposes, those of alienating the attachment of the Military from the Parliament, and transferring it to the Crown, as the source from whence bounties and donations were to flow. It had been much insisted on, that Ministers would subsequently obtain the approbation of Parliament; but admitting the supposition that this approbation were refused, what must the consequence prove to the Parliament, but hatred, and perhaps violence, from an enraged military; and an implicit devotion and subserviency, ever after, to the will of the Crown? Whatever the Ministry might allege of the approval given to preceding measures of this kind, no other proof of it appeared than the consent of the House to defray the expenses incurred; but this could not strictly be deemed an act of choice: the consciousness of the danger that would result from a refusal might as probably have made it a matter of necessity."

No Troops to be in the pay of the Crown save such as have been provided for by Parliament.

16. From what has been shown to be the constitutional rule as to the control of Parliament over the armed forces of the Crown, it appears clear that no forces should be kept in the employ or pay of the Crown, except such as are raised with the express sanction or provided for by Parliament; yet these conditions have not always been observed by the Ministers of the Crown.

A.D. 1778.

Volunteers paid by subscriptions raised without the assent of Parliament.

17. The first of these conditions was disregarded in the year 1778, when a strong feeling was entertained by certain classes of His Majesty's subjects "that the constitutional authority of Great Britain should be supported over her rebellious colonies in America," and at a meeting held at the London Tavern,[1] money was subscribed "to be applied in raising men for His Majesty's service in such manner as His Majesty should think fit."[2]

18. The legality of these proceedings when questioned was

[1] 19 Parl. Hist., p. 631, 17 Jan., 1778.

[2] 36 Com. Journ., p. 613.

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justified principally upon the precedents of 1745 and 1759,[1] for money and men were then voluntarily given to the King without the consent of Parliament. Mr. Wilkes, apparently with the sanction of Mr. Burke, moved to bring in a Bill[2] "more effectually to prevent the dangerous and unconstitutional practice of giving, or granting, money to the Crown, as a private aid, loan, benevolence, or subscription, for public purposes, without the consent of Parliament,"[3] and prefaced his motion with a speech laying down what most statesmen of the present day would accept as the constitutional rule in such a case. "The constitution," he said, "has wisely placed in the Crown the right of raising forces on a very pressing and dangerous emergency. It is a power necessary for the safety of the State, for the defence of the people. The strongest check is, however, at the same time given to any improper exercise of this power. It is controlled by the necessity of an application to Parliament for the maintenance of such forces. If troops could be raised, kept up, and paid, without the concurrence of this House, the liberties of this country must be at the mercy of the military and their Commander-in-Chief, perhaps an ambitious Prince. Our Statute Law, sir, is not silent on this occasion. Every year in the Mutiny Act it is expressly declared that 'the raising or keeping a standing army within this kingdom, in time of peace, unless it be with the consent of Parliament, is against law.' But, sir, if the Crown can by a prerogative, which is not disputed, raise a standing army, and by private loans, benevolences, or subscriptions, keep this standing army on foot, no application whatever need be made to Parliament. Our Government would then not be that of the law, but of the sword, to which all appeals must be trifling and inefficacious. Parliaments are now convened to vote the necessary supplies, which are regularly asked of the Commons on the first day of the session. If Government could receive them in any other mode than by the grants of this House, the legisla-

Legality thereof questioned in Parliament.

Crown has the power of defending the Realm.

But the sanction of Parliament necessary.

[1] Lord Hardwicke's sentence on the condemned Peers, 18 How. Stat. Trials, p. 501. [2] 19 Parl. Hist., p. 692. [3] Ib., pp. 997-81, 1009, 2nd April.

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ture itself would not only lose its most important function, but become unnecessary, and very soon obnoxious. The executive power must be trusted with the raising of forces; but it is likewise the duty of this House to their constituents to take care that the number of those forces be so proportioned to the defence of the State, that the security of the subject may be provided for, and yet no alarm given to a nation very justly jealous of the least danger to its liberties. While the military receive their pay from the grants of this House, the maintenance of the army must depend on the approbation of Parliament; but if an artful or enterprising prince can find other resources, the soldier will then look up to the *prince*, and *not* to the representatives of the people. The executive and legislative power must now concur in the measure of keeping on foot any number of regular troops, both in its first adoption and continuance, or it cannot be the act of all the constituent parts of this Government."

That to be given by votes in supply.

19. A Circular addressed to Lords-Lieutenant in March, 1794, inviting subscriptions, was put forth by Mr. Pitt's Government, and encountered a fierce opposition from Mr. Grey and Mr. Fox. It is the last effort recorded of any attempt on the part of the Ministers of the Crown to raise supplies for the defence of the kingdom except through the agency of Parliament.[1]

A.D. 1794. Circular to Lords-Lieutenant.

20. The other of these conditions was disregarded in the year 1816, when the English army, consisting of 34,000 men, was left in the occupation of Paris, and paid for by France. Circumstances in any degree similar had not arisen since the reign of Charles II., when, as it has been shown, the Commons interfered with this exercise of power on behalf of the Crown, and required the recall and disbandment of the troops. Possibly this passage in our parliamentary history had been overlooked, as the plans of the ministry were to leave the troops there without obtaining any sanction from Parliament. When the army estimates were presented to the

A.D. 1816. English Troops in pay of France.

[1] 31 Parl. Hist., p. 84.

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House, the 34,000 men were shown to be in France, and a note on the Estimate informed the House[1] "that no vote would be submitted to Parliament for their pay, such being provided for out of the contributions which the Crown has to receive from France."

21. Had the House adopted this suggestion, it would have released all Parliamentary control over these men; therefore, before going into Committee of supply, a resolution was moved, "That it be an instruction to the Committee to make provision for the charge of the British army in France." It required little argument to convince the House of the necessity for this instruction, "If," said Mr. Wynn,[2] "there was one principle more important than another for the Commons of England to adhere to, it was that *they* should have the complete control of all armed forces kept on foot by the Crown. Nothing could be more contrary to the spirit of our Constitution, or more dangerous to our liberties, than the existence of a military force under the command of the Crown, and dependent upon foreign contributions for support. If this were allowed, we might have an army at Calais capable of being wafted in a few hours to our shores, which Parliament would have no power to disband. The only means by which the legislature could control the army was by controlling the supplies for maintaining it; and this control it would be impossible to exercise, if the Crown were allowed to draw supplies from foreign countries without its consent, and to apply them without its interference." The Ministers saw the force of these objections, and yielded to them.

Payment of Troops by Crown out of French subsidy objected to.

22. But the French subsidy and its application by the Crown, without the authority of Parliament, were questions too important to be disposed of by a cursory debate upon a note printed on the army estimates, and therefore Sir James Mackintosh, at a later period of the session, brought the subject before the House upon five resolutions,[3] claim-

General question discussed by Sir James Mackintosh.

[1] 32 H. D. (O. S.), pp. 930, 986.
[2] 32 ib., p. 1080.
[3] 34 ib., pp. 518-547.

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ing the French Contribution as *droits* of the Crown, within the control of Parliament. "This Constitution," he said,[1] "has provided various means of check on that most unmanageable instrument of power, a standing army. Whether the union of all of them be an adequate security may be doubted, but no man ever thought that all were more than enough. One of these controls is the annual Mutiny Bill, which renders the means of maintaining discipline annually dependent on the pleasure of Parliament. This check is held by the whole legislature. Another, and the only control exclusively vested in the House of Commons, is the annual grant of money for the support of the army. It is in its nature the most effectual; it is the privilege of the House of Commons alone. The Constitution allows the other House to reject our votes of supply, but neither to alter their nature nor to increase their amount. It is the peculiar characteristic of the Commons' House; it is that which forms our strength and our pride; it is that which has given us a preponderating authority over all measures of state."

Constitutional checks upon the Standing Army.

23. He then criticised the fifth article of the Treaty of Paris, which provided the sum of 1,000,000*l.*, which was given by the Crown to the British troops:—"Why should not Parliament have been left the grace of voting this or any other sum to that army? Why should they be weaned from that dependence on Parliament which, in some measure, counterbalances the natural attachment of armies to a monarch? Would the reward be more grateful to this gallant army from the hands of foreign princes than from the thankful hearts of the Parliament and people of England? The principle of our constitutional army is, that *command*, preferment, and honour come to it from the Crown; but the general principle is equally undisputed, that for *all pecuniary remuneration* it is made to depend on Parliament. On this occasion I shall propose a resolution of censure upon what I think a deviation from those most important principles which guard the army against all chance of attachment to foreign princes, and against unbounded devotion even to the Crown of this kingdom."

Payment of the Army with Parliament. The command of it with the Crown.

[1] 34 H. D., p. 520.

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24. The Estimates voted for the Army originally embraced few other items than that of pay, for, until Mr. Burke's Act came into operation, that item included all the contingent and non-effective allowances which are now borne by the public, and form the subject of separate Estimates.[1] From the officers' and soldiers' pay certain deductions were made—as for Chelsea Hospital and the Regimental Agent. The soldier's pay also included deductions for medicines, for the paymaster, and lastly for his clothing.

Originally, pay included various allowances.

25. The regimental establishment also bore upon it the pay of (fictitious) men, appropriated by royal authority to various objects. Thus, in each troop or company, the pay—of two warrant men to the widows of officers—of one warrant man to the colonel for loss of clothing by the desertion of soldiers,—of one warrant man to the captain to cover his losses by the death of the soldier (having to bury him and pay his debts), or by his desertion, with his clothes; and, lastly,—one warrant man to the agent.

Pay of fictitious men voted, and the money appropriated by Royal Warrant.

26. The pay was issued in two portions—that of the officer as "subsistence," and the residue (one-fourth) as "arrears;" that of the soldier as subsistence, and the residue as "off-reckonings." These distinctions in issue continued, as to the Army generally, until the year 1797, and as to the Guards until the year 1831.[2]

Pay issued in separate portions, as for subsistence and arrears.

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[1] See Appendix, Note G. As to the pay of the Army from 1683 to 1830, see a valuable note of the late Mr. John Croome's, prepared for the late Lord Hardinge, and printed in the Appendix to Colonel Mackinnon's 'Coldstream Guards,' vol. ii., p. 405; and as to same subject to the year 1850, see another paper by the same authority, 'Report of Select Committee on Army and Ordnance Expenditure, 1850,' p. 829. Mr. Croomes was one of several Civil servants trained under Lord Palmerston at the War Office, whose public services were of the highest value.

[2] The pay of a Regiment of 8 Companies upon an Establishment dated 25 Dec., 1783, was divided in the hands of the Paymaster-General into 7 heads, thus:—

| | £ | s. | d. |
|---|---|---|---|
| 1. Subsistence .. .. .. .. | 7345 | 12 | 6 |
| 2. Clearings .. .. .. .. | 637 | 11 | 8 |
| 3. Off-reckonings .. .. .. .. | 1284 | 3 | 2½ |
| 4. Widows .. .. .. .. | 184 | 8 | 0 |
| 5. Hospitals .. .. .. .. | 27 | 11 | 6 |
| 6. Poundage .. .. .. .. | 503 | 4 | 10½ |
| 7. Agency .. .. .. .. .. | 80 | 5 | 9½ |

Each of these items was again redistributed according to Custom or Regulation,

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Small pay of the officers.

27. The pay of the officer cannot be looked upon—having regard to the purchase of his commission—in any other light than as "*honorarium*," clearly indicating the policy of employing men of independent means—not mere professional officers — in the military service of the Crown. "It is the promotion by purchase," wrote the Duke of Wellington, "which brings into the Service men of fortune and character—men who have some connection with the interests and fortunes of the country, besides the commissions which they hold from His Majesty. It is this circumstance which exempts the British Army from the character of being a "mercenary Army," and has rendered its employment for nearly a century and a half not only not inconsistent with the constitutional privileges of the country, but safe and beneficial."[1] He then adds, "three-fourths of the whole number receive but little for their service besides the honour of serving the King." The dates at which an increase has been given to the pay of officers are A.D. 1797, 1803, 1806, and later years.

Pay of the soldier, and as to the amount.

28. The pay of the soldier in A.D. 1797 was fixed at one shilling a day, with a stoppage on "home" service of 4*s.* a week, or 6$\frac{5}{7}$*d.* per day, and on foreign service of 6*d.* a day when rationed, and 3$\frac{1}{2}$*d.* a day when not rationed by the public. In 1800 a contingent allowance of a 1*d.* a day was granted for beer, but his stoppages for mess were increased. The pay of the soldier has been enhanced at frequent intervals rather by waiving deductions and adding other consequent advantages, as better clothing, barrack, and hospital accommodation, but the last actual increase of money was by Royal Warrant of 29th June, 1867.

As to increase of the soldier's pay.

29. The question of the increase of the pay of the Standing Army was, in earlier times than the present, dealt with by Parliament on the one hand, and by the Crown on the other, with *extreme* caution.[2] It is like the sea

or both, to the various persons entitled. See Grove's 'Military Antiquities,' vol. ii., Appendix 37; 9th Report of Commissioners on Public Accounts of 1783; and Commissioners' Report of 1746, in vol. ii. of Reports 75 to 127.

[1] Army and Navy Appointments, 1833, p. 274; 7 H. D. (O. S.), pp. 1134, 1135.

[2] 11 Parl. Hist., p. 1403; 14 ib., p. 901; 7 H. D. (O. S.), pp. 419, 483, 515; 46 Geo. III., c. 140; 88 H. D. (3), p. 886.

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advancing upon a receding coast. Once advanced, it can never again be reduced; at least, so thought the Duke of Wellington and other experienced officers, in giving their evidence before the Finance Committee of 1828. For this reason the Duke firmly opposed the increase, explaining as his reason that if the Army became costly it would become burdensome to the people, and that the difficulty of maintaining it at its full strength would be increased, and therefore that the reduction of numbers would follow as the probable result.

30. Mr. Windham's[1] argument against a large increase of the soldier's pay was,—that you made the Army licentious: in other words, cases of habitual drunkenness increased. Severity of discipline must then be resorted to, and *that* severity became a deterrent.

Mr. Windham refused to increase the pay.

31. Until the Crimean War, the soldier (except in India) received the same pay in peace as in war; but in the heat of that struggle, when recruits were scarce, the Government proposed[2] to give to each soldier before the enemy, a shilling a day in reversion, in addition to his usual pay; a proposal which, if carried, would have added—according to the estimate of a noble peer—730,000*l.* to the annual item for pay. The scheme was therefore modified by reducing the increase to sixpence a day paid to the soldier, with the power vested in the commanding officer of stopping it for misconduct.[3]

A new principle of increase proposed during the Crimean War.

32. The clothing of the soldier, so far as it is provided by the public, must be considered as part of his pay. By Warrant of Queen Anne,[4] dated 14th January, 1706-8, the business was managed by a Clothing Board chosen annually by the Board of General Officers. The duty of this Board[5] was to select, seal, and issue patterns for the clothing of each regiment by the colonel, subject to inspection and

Clothing of the soldier. Old system (1692).

[1] 6 H. D. (O. S.), pp. 663, 664. [2] 139 H. D. (3), pp. 275, 434.
[3] Ib., pp. 438, 444. [4] Mis. Bk. 519, pp. 45, 107, and Letter Bk. 136, pp. 67-76.
[5] See Report to House of Commons, 1746; vol. ii. of House of Commons Reports, p. 90; 9th Report of Commissioners on Public Accounts (1789), pp. 65, 266; 6th Report of Commissioners of Military Inquiry, p. 375; and 11 H. D. (O. S.), p. 1002.

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approval. The cost was borne by the colonel out of his allowance for off-reckonings, and the balance (if any) was a source of emolument.

New system (1854).

33. This method of clothing (not extending to the Ordnance Corps) originated with the Army, and could be traced back to the year 1692. In the year 1854 it was, however, annulled by Royal Warrant of the 6th June; the clothing of the Army was taken into the hands of the Crown, and a compensation given to the different Colonels, varying from 450*l.* to 1000*l.* per annum. The old system[1] probably conduced to economy, as it was both the duty and interest of the commanding officer to see that the clothing of the regiment was fairly used by the men. The present Clothing Warrant in force bears date the 8th January, 1865.

Rights of the soldier to pay and clothing to be scrupulously regarded.

34. In every matter of pecuniary claim, the soldier should be treated with inflexible justice. Implicit obedience is demanded, and therefore the honour of the Crown is pledged to give the fairest consideration to the soldier's rights. "The British soldier," said the late Lord Hardinge,[2] "is of all men in the world the most jealous of what he calls *his rights*. During the last forty or fifty years[3] the greatest number of cases of anything approaching a mutiny have been caused by the soldier conceiving, in matters of pay and clothing, he is not fairly dealt with."[4]

Stoppages therefore to be seldom resorted to as a punishment.

35. It was for this reason that Lord Hardinge was against the increase of punishment by way of stoppages from the soldier's pay. "I think it would be a very precarious discretion to give any such power of stopping pay, except in the case of drunkenness. I think the commanding officer had better exercise any other authority than that of touching the pecuniary rights of the soldier."[5]

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[1] See Duke of Wellington's evidence before Finance Committee, 1828 (April 15th).

[2] Report on Military Punishments, 1836, p. 303.

[3] See Mutiny 1856, 143 H. D. (3), pp. 543, 557, 682, 740, 860.

[4] The advantages that he enjoys, in contrast to the agricultural labourer, will be found summarised in an able paper printed in Appendix XXXI.

[5] 143 H. D., p. 303.

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36. The history of half-pay and other non-effective allowances granted to officers and their relations, many of which date only from the present century, are given in the Appendix.[1] These grants whether of full or half-pay are provided for by the civil community, as represented in Parliament, and hence a parliamentary officer has always had the charge of administering them on behalf of the Crown. They are regulated by Royal Warrant of 3rd February, 1866, revised by that of January, 1869.

Pay and half-pay administered by a Parliamentary officer.

37. It will form the subject of a separate chapter to show the control which—as its own peculiar privilege—the House of Commons has assumed to exercise over the ordinary and extraordinary military expenditure of the Crown; but at present enough has been written to show how Parliament, since the Revolution, has undertaken to provide for the *ordinary* expenditure of the Army voted on yearly Estimate.

Control of House of Commons over military expenditure of the Crown.

[1] Appendix, Note G.

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# CHAPTER VII.

## THE CONTROL AND AUDIT OF MILITARY EXPENDITURE BY PARLIAMENT.

Origin of Standing Army and National Debt contemporaneous.

1. THE adoption of a Standing Army at the Revolution obliged the State to have recourse in the same reign to a National Debt. Both institutions have developed in some proportionable degree one to the other, and no subject is more important for the welfare of the State than the Establishment of a sound theory of Military Finance. What the Commons insisted upon at an early period in our constitutional history was a thoroughly open and independent control exercised on the examination of the Estimates, and subsequently upon the Audit of the Expenditure. The present chapter will therefore be devoted to the consideration of the subject of Control and Audit of Military Expenditure by Parliament.

Two classes of military expenditure: (1.) Ordinaries on Estimate; (2), Extraordinaries without Estimate.

2. The military expenditure of the country—from the date of the first Estimate laid before the Parliament of William and Mary—has been divided into two heads. First, the Ordinary expenditure—which is voted on previous Estimate prepared in some instances by a Committee of the Commons, but in later years by the Secretary at War; and, secondly, the Contingent Expenditure or Extraordinaries of the Army, for which—prior to the year 1836—no previous Estimate was laid before Parliament.

"Ordinary" expenditure, and the method of disbursing it.

3. The Ordinary expenditure was disbursed by the Paymaster-General, under Warrants from the Secretary at War (founded upon Establishments approved by the Crown), to the Colonel of the regiment, who distributed the amount in pay and allowances to the Officers and men upon a scale laid down by Regulation. If, therefore, the officers and men on the "Establishment" were "effectives in the regiment," and the money issued to the colonel was paid to effectives *only*, no fraud could be committed upon the public.

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4. The Extraordinaries of the Army arose and were disbursed under different circumstances. In the Estimate for the war in Ireland which was laid before the Commons on the 21st November, 1688, an allowance of 1000*l.* for every 20,000*l.* was granted "for certain charges incident to the forces besides the extraordinary expense of the expedition.[1] In the War estimate laid before the Commons in December, 1693, the sum of 60,000*l.* was included for Hospitals and Contingencies, but the Commons rejected[2] that vote, and resolved that a sum *not* exceeding the sum of 147,000*l.* be allowed for hospitals and contingencies *and other* extraordinary charges of the war for the year 1694.[3] These expenses were the incidents of war, but they were incurred in later years for purposes totally unconnected either with War or with the Army. "Extraordinaries."

5. The disbursement of the Extraordinaries was made in the first instance upon the order of the General officer in Command of the Army to whom authority was given by his Military commission[4] to direct these payments. These orders, though honoured by, were no discharge to the Paymaster-General, who could not, as a Parliamentary Officer, recognise the authority of a Military Officer, appointed solely by the Crown, to order the disbursement of the Public Treasure. It was needful, therefore, for the Paymaster-General to memorialize the Treasury, praying that a Royal Sign Manual Warrant might be issued, directing the Auditors of Imprest to allow to him in his accounts[5] the payments thus made for Extraordinaries. The method of disbursing them.

6. The system was loose, and calculated to lead to abuse. In the course of time, extravagance and dishonesty resulted from it. When Parliament undertook to provide for all the expenses of the Army by voting and appropriating supplies for Army services, there was no intention of making the grant—either directly or from the Crown—to the Army or to be used by the Officers in Command of it as they might see fit; on the contrary, the supplies were voted to the Extraordinaries lead to great abuses.

[1] 10 Com. Journ., pp. 59-62. [2] 11 Com. Journ., p. 37. [3] Ib., pp. 39, 40.
[4] See the Duke of Marlborough's commission, in Appendix XXXII.
[5] 8th Rep. on Public Accounts (1783), p. 48.

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Crown as the Supreme Head of the realm, responsible to Parliament, through the Cabinet, for their prudent disbursement, according to the Acts of Appropriation for the time in force.

Control and audit by Parliament of military expenditure.

7. The course adopted by Parliament in the reigns of William III. and Queen Anne, as to the Control of Military Expenditure and Audit of Public Accounts, if fairly considered, can leave no doubt on this point; for whether the persons to be charged with misfeasance were the King, in the first reign, or the Duke of Marlborough in the second, the Commons did not hesitate unflinchingly to do their duty as the Constitutional Guardians of the Public Purse, by bringing all irregularities—if no stronger term be applicable—to notice.

Competency of Parliament to deal with the subject.

8. Early in the reign of William III., a Committee of the Commons[1] was formed to whom the preparation or the examination of the Army and Navy Estimates was referred. The Ministers of the Crown being primarily responsible to the Country for the expenditure, was not a doctrine accepted and used to exclude the action of Independent Members, upon the plea that no Civilian can properly understand Army and Navy requirements. Indeed the Reports made to Parliament during these reigns show any such theory to be a fallacy.

Commons assert their right against the Lords to appoint auditors.

9. Further than this, the Commons claimed, as against the Lords, the right of Auditing the Public Accounts either by members of, or persons named by, their own House. Nothing could be more clear and emphatic than their assertion of this claim at a conference with the Lords in the session of 1691.

Conference between the Houses on this question.

10. Their managers at the conference are reported to have spoken thus:—

(1.) "That the title and design of the Bill is to appoint Commissioners[2] to examine, take, and state

[1] 10 Com. Journ., pp. 498-515, 585, 586, 588, 606, and 12 Com. Journ., p. 31.
[2] Hatsell, pp. 467-78.

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the public accounts of the kingdom; which, during the session of Parliament, is the proper work of the House of Commons: and no inference can be more natural than that it is in the Commons only to name Commissioners for the exercise of that authority, which is an essential part of their constitution.

. . . . . .

(2.) "The Lords have many high privileges[1] to recommend their Lordships to the favour of their Prince, and to support their figure in the government; but the Commons have little besides this one of giving money and granting aids. This is their undoubted and inherent right; and therefore everything that intrenches on that the Commons may be allowed to be extremely jealous of.

(3.) "That the liberty of naming Commissioners to take account of the public money is a necessary dependence of this right of giving money and granting aids, is evident. Their Lordships will consider that, when any aids are given, the Commons only do judge of the necessities of the Crown: which cannot otherwise be made manifest to them, than by inquiring how the money which hath been granted, and the revenue of the Crown, have been expended and applied. . . . And when the Commons do think fit to erect such a commission, the expense made in the execution of it must, soon or late, be drawn from the purse of the people; and since the burthen must inevitably light upon their shoulders, they only can be judges of the weight which is fit to be imposed, and to assign the quantum of the charge, which in this case is proportionable to the number of the Commissioners. So that this doth not only relate to this undoubted right of the Commons, but doth finally end in raising of money itself; which being a privilege derived to them from their ancestors, and continued by the uninterrupted practice of all ages, it is a right the Commons cannot depart from, but must for ever assert, support, and maintain."

An audit—the sequel to an appropriation of supplies.

11. The Audit Acts[2] passed in the reign of William III.

[1] Hatsell, p. 477.

[2] 2 William and Mary (sess. 2), c. 11; 7 & 8 Wm. III., c. 8; 10 Com. Journ., pp. 378, 421, 422-25, 528, 537, and 11 Com. Journ., pp. 24, 26.



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produced little practical result. "Whether," wrote Bishop Burnet, "this flowed from the weakness or corruption of the Commissioners, or from the integrity or cunning of those who dealt in the public money, cannot be determined. The party that had opposed the late King had made this the chief object of their complaints all the nation over,—that the public was robbed, and that private men lived high, and yet raised large estates out of the public treasure. This had a great effect over England; for all people naturally hearken to complaints of this kind, and very easily believe them. It was also said, to excuse the fruitlessness of the former commissions, that no discoveries could be made, under a ministry that would surely favour their under-workmen, though they were known to be guilty."

Audit Acts of Wm. III.'s reign produced no practical result.

12. One of the earliest statutes passed in the reign of Queen Anne was for the Revival and Continuance of the Audit Acts. "I am very well pleased," the Queen is reported to have said, "to have given my assent to the Act[1] for taking the Public Accounts; nothing is more reasonable than to give the kingdom the satisfaction of having those great sums accounted for, which were raised to carry on the late war, especially when it is necessary, for our own safety, and the support of our allies, to continue great taxes."[2]

Audit Acts revived, and Queen Anne heartily approved thereof.

13. As might be expected, the first Public Accountant whose transactions were investigated by the Parliamentary Commissioners was the Paymaster-General of the forces. Between the 5th November, 1688, and Michaelmas, 1703, he had received 19,518,452*l.* of the public money. His accounts up to the 25th March, 1699, had been delivered to the Auditors of Imprest, and he held *their* discharge or quietus for all moneys issued prior to the 31st March, 1692. These facts, and that the former Parliamentary Commissioners had also investigated his accounts to the latter date, did not preclude the present Commissioners from entering upon the examination of the

The accounts of the Paymaster-General of the Forces—first examination.

Audit by Auditors of Imprest no

[1] 1 Anne, c. 4.

[2] 8 Stat. Realm, p. 8.

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Paymaster's accounts from March, 1688. Indeed they took an item of 172,340*l.*, which had been allowed by the auditors, as one of their charges against him. "There is," as their Report to Parliament stated, "a Warrant, dated the 17th of October, 1689,[1] to the Auditors of the Imprests, to allow the Paymaster-General the sum of 172,340*l.*, which he had direction from His Majesty to pay to several persons, without deductions. The Auditors are not to charge the persons aforesaid with these sums, or any part thereof, His Majesty reserving the examination of the particular disbursements to himself, or to such as he shall appoint for that purpose."

bar to the inquiries of the Parliamentary Commissioners.

14. The facts were admitted. The money had been paid for purposes of misappropriation; but how could an officer, only ministerial, and bound, as the Paymaster-General was, to obey the orders of the King and the Treasury—be censured by Parliament? "The Commissioners," was the reply of Lord Ranelagh, "complain of the *Warrant* mentioned therein, and not of the Paymaster, who certainly paid all the sums contained in the said Warrant, upon *proper* directions, and delivered to the Auditor authentic *vouchers* for the same; and though he need say no more to justify himself, yet, for the vindication of the Warrant, he begs leave to set down here the [six] particular sums mentioned therein, which, together, make up the said 172,340*l.*, and the nature thereof."

Misappropriation by order of Wm. III.

15. These were 1,000*l.* to Lord Portland, 700*l.* to Lord Dartmouth, 1,140*l.* to the Speaker, 6,000*l.* to the House Steward of the Prince of Orange, and 1,000*l.* to one of the Queen's Dressers, and 162,500 to Van der Esch, the Paymaster to the King's Dutch troops. The first five (making 9340*l.*), he admitted, might seem improper to be paid out of the Army votes, but their payment was explained, "because there was no Privy Seal in being, but that of the Paymaster's of the Army, when these payments were directed; and nobody can think that any of these five sums were proper to be accounted for but to His late Majesty, or such as he should appoint for that purpose;" and as to the

Particular sums that were misappropriated.

[1] 6 Parl. Hist., p. 101.



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sixth sum 162,500*l.*, the explanation was:—"It is well known that His late Majesty would not, for many years after his accession to the Crown, suffer his Dutch forces either to be mustered, or paid, but according to their own method; and therefore, not only in this Warrant, but in several subsequent Warrants, relating to the payment of his said Dutch forces, His said Majesty always reserved the said Van der Esch's accounts to his own examination."

Parliamentary responsibilities of the Paymaster-General submitted to the Commons.

16. That the Commissioners of the Treasury who had countersigned the King's Warrant were more culpable than the Paymaster-General who had obeyed it, cannot be questioned; but that the Paymaster should altogether evade his responsibility to Parliament for his share in these misappropriations of public moneys was not to be tolerated; therefore the subject was brought before the House of Commons on the 3rd December, 1702, upon a short reply from the Commissioners, with this question:—"Whether his Lordship is merely a Ministerial Officer, is submitted to you; but your Commissioners apprehend such doctrine must be attended with very absurd, as well as very fatal, consequences to the public."

Decision of the House of Commons on the Paymaster's case.

17. The Parliamentary History contains no record of the debate; but having on the 3rd of December disposed of the Paymaster-General's plea that his accounts had already been examined by the Auditors of Imprest, and therefore ought not to be again examined by their Commissioners, by resolving:—"That the Commissioners appointed by Act of Parliament, for taking, examining, and stating the public accounts of the kingdom, have power to examine the accounts of the Paymaster-General of the Army, although his accounts have been delivered to former Commissioners, or that they have been passed by the Auditors of the Imprest"—the Commons proceeded to the consideration of the principal question, and their Journals contain these Resolutions:—

"1. That all moneys issued by the Paymaster-General of the Army ought to be applied to the use of the Army and Forces only, and to no other use or purpose whatever.

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"2. That all Privy Seals, Orders of the Treasury,[1] or other Warrants, to the Paymaster-General of the Army, to apply the money in his hands to other than the use of the Army and Forces, are illegal and void.

"3. That all Privy Seals or Warrants to the Auditors of the Imprest, to pass accounts, without proper vouchers, or to make any allowances other than according to the law and course of the Exchequer, are illegal and void.

"4. That it appears to this House that the Paymaster-General of the Army hath misapplied several sums of the public money."

18. This decision[2] of the Commons that the Paymaster-General had betrayed the public trust reposed in him by Parliament as a Minister of the Crown, was followed up by his expulsion from their House on the 1st of February:— He was expelled the House as guilty of high crime and misdemeanour.

"The Resolutions of the 4th and 7th of December last, relating to the Earl of Ranelagh, were read.

"Resolved,—That Richard, Earl of Ranelagh, late Paymaster of the Forces, is guilty of a high crime and misdemeanour, in misapplying several sums of public money.

"Resolved,—That Richard, Earl of Ranelagh, for his said offences, be expelled this House.

"Resolved,—That an humble address be drawn up, to be presented to Her Majesty, upon the narrative, representation, and observations of the said Commissioners of Accounts, and upon the Resolutions of this House thereupon, and upon the debate of the House."

19. The Commons in their address[3] complained of the neglect of the Treasury in the business of *other* departments of the State, but attributed *these* misappropriations of public moneys *solely* to the Paymaster. "Your Commons, by the great fidelity and diligence of the same Commissioners for the taking, examining, and stating the public accounts of the kingdom, have not only discovered the several mismanagements, but also some of the unwarrantable proceedings used by the said late Address to the Crown.

[1] 14 Com. Journ., p. 66. [2] Ib., p. 66-70. [3] Ib., pp. 170, 171.

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Paymaster of Your Majesty's Forces, by whom a considerable part of the money which came to his hands, and which ought not to have been applied to any other purpose than the payment of the Army, hath been diverted to his own and to other private uses; for all which, upon a full and fair hearing in his own defence, he hath justly incurred the censure of this House, and been declared guilty of a high crime and misdemeanour."

A.D. 1711.

Further irregularities in military expenditure.

Resolutions of the Commons.

20. Later in the reign, other great Irregularities in Military expenditure were committed. The Navy contracted a debt to the extent of 606,806*l.* 7*s.* 7*d.* by the issue of supplies to the Army from 1701 to 1708, without deducting the cost thereof from the pay of the troops. The Commons therefore addressed the Crown in terms of complaint that such irregularities should have been permitted, and prefaced their address with these Resolutions (of the 13th May, 1711):—

"1. That the increasing the public expenditure beyond the supplies annually granted by Parliament [1] hath been the chief occasion of the debts of the nation, and an invasion of the rights of Parliament.

"2. That such diverting of moneys, issued to the service of the Navy, to the Land Service, hath lessened the credit of the Navy, discouraged the seamen, occasioned the paying extravagant rates on the Navy contracts, and was a misapplication of the public money.

"3. That the applying any sum of unappropriated money, or surplusages of funds, to uses not voted, or addressed for, by Parliament, hath been a misapplication of the public money."

Address to the Throne.

Excess of expenditure—extraordinaries—declared illegal, and an invasion of the rights of Parliament.

21. The substance of these Resolutions was put into the form of an Address to the Throne, and upon the first Resolution the address ran in these words:—"In examining into the state of the War,[2] and looking back from the beginning of it, we find that, in several years the service has been enlarged, and the charge of it increased beyond the bounds prescribed, and the

[1] 16 Com. Journ., pp. 446-8, 662, 664, 664. [2] 6 Parl. Hist., p. 1027.

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Annual Supplies granted by Parliament; to this new and illegal practice we must, in great measure, ascribe the rise and growth of the heavy debts that lie upon the Nation; nor does the consequence of it end there, for we must also represent it to Your Majesty as a dangerous invasion of the rights of Parliament. The Commons must ever assert it as their sole and undoubted privilege to grant money, and to adjust and limit the proportions of it; and when your Majesty has recommended to them to consider of supplies, and they have deliberated upon the several Estimates for the Annual Services, and considered and determined what the Nation is able to bear, their proceedings would be very vain and ineffectual, if, after the respective sums are stated and granted, those, *through whose hands* the disposition of them passes, are *allowed, in any measure,* to alter and *enlarge* them. This is an attempt which very little differs from levying money without consent of Parliament, as will appear to your Majesty from this one consideration,—that a charge of that kind once incurred, and laid as a debt upon the Navy, or any other public office, is so far binding upon Parliament, that, how little soever they approve of the means by which it was contracted, yet the Public Credit being pawned, the Commons cannot, without the Ruin of that, refuse to provide for it."

22. The increase of military expenditure beyond the supplies is stated on good authority[1] to have been in the three years anterior to this period as under:— Excess of expenditure.

| | £ | s. | d. |
|---|---|---|---|
| For the year 1705. . . . . | 152,402 | 4 | 2 |
| „ „ 1706 . . . . . | 299,760 | 13 | 2 |
| „ „ 1707 . . . . . | 135,242 | 1 | 8 |

and seems comparatively trifling to the excesses that were afterwards sanctioned in the German, American, and Peninsular wars. The Commons were resolved to Control the Expenditure, and another Act[2] for Auditing the Public Accounts, by seven Commissioners chosen by ballot out of the Another Audit Act passed.

[1] 3 Hats. Prec., p. 21, and Army and Ordnance Expend. (1850) p. 1113.
[2] 9 Anne, c. 18.

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Commons,[1] was passed, and the books and papers of the old Commissioners were handed over to them.

Independence of the Audit Commissioners.

23. The Independence with which these Commissioners discharged their office, may be judged of by the contents of their Reports, and the person against whom they did not flinch from bringing charges. In the investigation of the accounts of the War,[2] they found that the General in chief command had taken—as a "perquisite" pertaining to the office of Commander-in-Chief in the Low Countries (no such office having been previously held by a British subject)—the total sum of 63,410*l.* 3*s.* 7*d.* from the person who held the Treasury contract for the Supply of Bread and Bread Waggons to the English troops from 1702 to 1711. These facts were undisputed, and those also which the Commissioners stated in their Report, declaring their opinion that the allowance was neither legal nor warrantable, and calculated to lead to abuse—for "by the contracts the General appears to be the sole check on the contractors; he is to take care that the terms of the contractors are duly performed; he is to judge of all deductions to be made from, and allowance to, the contractors; and whether, in such circumstances, he can receive any gratuity or perquisite from the contractors, without a breach of his trust, your Commissioners presume not to determine."[3]

The General's perquisites of 63,410*l.* 3*s.* 7*d.*

His allowance under Order of William III. of 15,174*l.* per annum for contingencies, "without account."

24. In addition to this "perquisite," the same General had taken—under the authority of the King, but without the knowledge of Parliament—a percentage of 2½ per cent.[4] on the money voted by Parliament for the pay of foreign troops, averaging a total annual receipt of 15,174*l.* 16*s.* The General's justification in this case was the Royal Warrant under the Sign Manual of William III. countersigned—not by the Lords of the Treasury as the Constitutional Ministers in such a transaction, but—by a Secretary of State,—which authorised the deduction "towards defraying such Extraordinary Contingent ex-

[1] 16 Com. Journ., pp. 544, 668, 673.
[2] 17 Com. Journ., p. 15.
[3] 6 Parl. Hist., p. 1053.
[4] Ib., pp. 1052, 1082.

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penses relating to the Foreign troops as cannot otherwise be provided for," and directed the Paymaster to "pay over the same according to such Warrants and in such proportions as the General should direct."

25. As the Recipient of Public money voted by Parliament, the Audit Commissioners required that the General should—as any other Subject would be bound to do— account to *them*, but, as in a later[1] instance, no such account was ever rendered, and the only information ever vouchsafed was that the War had been greatly promoted, in the opinion of the General, by intelligence and secret service, paid for by him out of this Annual Allowance.

Refusal to account for these sums as public moneys.

26. The Commissioners had no alternative but to submit all the facts to the House of Commons, who, unfortunately for the recipient of these amounts, took a sterner view of his duty than he had done. On the 24th January, that House resolved:[2]—

Report submitted to the House of Commons.

"1. That the taking several sums of money annually by the Duke of Marlborough from the contractors for furnishing the bread and bread waggons in the Low Countries was unwarrantable and illegal." An amendment to insert the words "being an usual and customary payment made by the contractors to the Commander-in-Chief in the Low Countries," after the words "Low Countries" in the original motion, having been lost by a majority of 270 against 165.

Decisions of the House.

2. Without any division, except on the previous question of adjournment:—"That the 2½ per cent. deducted from the foreign troops in Her Majesty's pay is public money, and ought to be accounted for.

"3. That the said Resolutions be laid before Her Majesty by the whole House."

27. In Military Expenditure these were not the only abuses existent. Then and for many years later there were no Civil servants attached to the departments of the Treasury or Secretary at War, to hold or disburse the Public Treasure as claims became justly due, but all control

Other abuses in military expenditure.

[1] The Barrackmaster-General, 1793-1806.

[2] 17 Com. Journ., p. 38.

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was in the hands of the General in Command and his subordinates. One or two extracts from the Second Report of the Commissioners will show the abuses that existed in the Payment of the Army:—

Abuses in pay of the army.

28. "One of the great mismanagements of the Army is that of paying Regiments without Establishments. The Paymaster-General hath returned on oath to us that the regiments of Hogon, d'Assa, and Dalzel were paid by authority of the *General's* warrant *only*. Whereas, according to the best information we can receive, no Regiment, Troop, or Company, ought to be paid without being first placed on some Establishment,[1] signed by the *Crown*, and countersigned by the Lord High Treasurer, or Commissioners of the *Treasury* for the time being; and therefore the Generals could not regularly direct such payments, unless the Crown had devolved this power upon them, which does not appear by any commission or instructions to have been done. Nor can we understand how they could charge the subsistence of several Regiments, serving in Spain, with the large payments that have been made to a body of Catalans, formed there after the battle of Almanza.

General's orders for payment irregular.

Extraordinaries, but not the number of men, under the direction of the general.

29. "The money given for Contingencies and Extraordinaries of the war is, by the Generals' commissions, subjected to their directions, *because* it was *impossible* to settle any *exact establishments for those expenses*, especially in the *distant parts of the war*. But to increase the number of forces beyond what was fixed by the Crown, and provided for by Parliament, is plainly raising men, and consequently money, without the consent of either."

Abuse in the payment of regiments.

30. The Commissioners then show that regiments had been paid (1) *before* they were established, or (2) on *several* establishments (whereby 90,954*l.* 19*s.* 2*d.* had been issued in excess), or (3) on larger establishments than were justified. One General (Macartney) had 3650*l.* issued to him as his pay for a service that he never entered upon.

[1] 6 Parl. Hist., p. 1177.

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31. The Report[1] proceeds:—"Another instance of mismanagement in the Army is mustering the troops complete. The Deputy-Commissary in Flanders, Mr. Marshal, hath declared on oath, that in the beginning of this war he was directed by the Duke of Marlborough to muster the troops in Her Majesty's pay there *complete* when *defective;* that he received a pistole per troop, and 10*s.* per company as a gratuity or perquisite on every muster from the subject troops.

Causes of it.

General orders regiments incomplete to muster as complete.

32. "This practice, we see, is grounded on the General's orders; on the Duke of Marlborough's, in Flanders; on the other Generals' in the other parts of the service, and it is justified by the pretence of applying the non-effective money to the recruiting the Army; which is alleged to have been so far from proving a disadvantage to the public, that it hath been a loss to those officers who were obliged to recruit their respective regiments, troops, and companies, and to take it in lieu of recruit money. Notwithstanding which your Commissioners think themselves obliged to take notice that those warrants or orders of the Generals have been a direct breach of the law, an occasion of great expense to the public, and a detriment to the service.

Alleged reason for so doing.

33. "It might be added that this method had been a further occasion of expense, by supplying provisions, transports, clothes, and other necessaries, according to the full establishments: and the troops (as is before said) being everywhere defective, and in some parts of the war not above *half* complete, the loss on these heads must be proportionable to the deficiency.

Great increase of expense thereby.

34. "What hath been hitherto said relates only to Her Majesty's subject troops. But the mismanagements have been yet greater and more gross with respect to the foreign forces in British pay,—*they never having been mustered at all.* For neither the review made by Mr. Marshal, in conjunction with the Dutch Commissary, without treaty or establishment for his guide, nor that reported to be made by Mr. Armstrong of a particular corps at

As to foreign troops—greater irregularities.

[1] 6 Parl. Hist., p. 1182.

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Liege, can be accounted musters, no lists thereof being returned to the British Commissaries or Paymasters. But if it should be insisted on that these were musters, it is extraordinary (such as they were) they should be discontinued, and that the Commissaries' application to the Duke of Marlborough for an order to muster them in succeeding years should be unsuccessful. The reason given to support this practice, as it concerns the subject troops, ceases with regard to the foreigners. For they or their respective princes are always allowed both ordinary or extraordinary recruit money, besides their constant pay, as appears by the several treaties, conventions, and stipulations with them; and there is not the least colour for their being mustered complete, when they were defective, nor any excuse for those who refused to give power for their being mustered at all. Because the public, paying always complete, is thereby evidently defrauded, and, in effect, pay twice for the same thing."

Increase of National Debt.

35. It is not, therefore, a matter of surprise to find that the National Debt had risen, at the conclusion of the reign of Queen Anne, from 16,394,702*l.* (at which sum it stood at the death of William III.) to the sum of 54,145,363*l.*, or that the Commons should manifest such anxiety to control the National Expenditure.

Apathy of the House of Commons in reigns of Geo. I. & II.

36. During the reigns of the two succeeding Sovereigns and the early period of George III.'s reign, the Commons showed far less vigilance in controlling the Ministers of the Crown in Military expenditure than in any other period of our Constitutional History. Not only did they refuse to pass an Act for the Audit of Public Accounts, but in two instances gave to the Crown an *unlimited* vote of credit or power to apply the whole supply of the year as the Crown might direct. In time of war, it is obviously necessary to trust the Ministers of the Crown and Executive Officers[1] with a greater measure of power than in times of peace; but in con-

[1] 18 Com. Journ., pp. 138, 559; 24 ib., pp. 258-60.

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fidence, as in necessity, there are degrees, and no one can justly be thought prudent who releases any constitutional safeguard beyond what the urgency of the case seems to require.

37. The first instance of an Unlimited Vote of Credit was that given by the Annual Appropriation Act, passed in the 13th George I.,[1] which enabled the Crown, out of the aids and supplies, to issue and apply such sums as should be necessary for defraying such expenses and engagements as had at any time been or should before or until the 25th December, 1727, be made by His Majesty in concerting such measures as he thinks would best conduce to the security of trade and navigation, and to the preserving and restoring the peace of Europe.[2] A.D. 1727. Unlimited vote of credit to the Crown.

38. The Act was passed, after great opposition, in both Houses, and the Constitutional Objections to it are thus stated upon the Lords' Journal[3]:—"1st. Because it is, we think, inconsistent with that part of the Bill which forbids the supplies to be issued for any other purposes than those specified, and renders ineffectual that appropriation of the public money which the wisdom of many Parliaments has thought, and we are convinced ought to be thought, a necessary security against the misapplication of it. Protest of the Lords.

"2. Because there is no provision in the Bill to oblige any person to give an account of any money that shall be disposed of by virtue of the power in this clause.

"3. Because we think that absolute powers ought to be given in a free Government only upon occasions of evident necessity, and when the very being of the Government is in danger; and though we allow our present circumstances to be as melancholy as they have almost at any time been, yet we think it a very improper remedy for our present State to depart from the approved, and, in our judgment, essential forms of giving the public money; nor can we be persuaded that it is the only, or even the best, expedient that can be found to extricate us out of our unhappy situation, to repose such a confidence in the Crown, in the disposition of Grant of absolute power inconsistent with a free Government.

[1] Cap. 8, sec. 22. [2] 20 Com. Journ., p. 834. [3] 8 Parl. Hist., p. 566.

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immense sums of money as may by the advice of wicked and incapable Ministers (if it should be our misfortune ever to have such) be attended with great prejudice to our properties, and great danger to our liberties, with the hopes of the preservation of which we cannot flatter ourselves, but by a strict adherence to those excellent Parliamentary methods, of granting all sums of money only *upon estimates*, and for *services publicly* avowed."

Geo. II.'s reign, another unlimited Vote of Credit to the Crown.

39. The second, and probably only other instance of an Unlimited Vote of Credit given to the Ministers of the Crown, was that conferred by the Appropriation Act[1] of 1735, in these terms:—"That it should be left for the Treasury to issue and apply, or cause to be issued or applied, out of the aids and supplies aforesaid, such sum and sums of money as shall be necessary to be issued and applied, until and before the 24th day of December, 1734, for or towards the increase of such expenses as shall arise by such augmentations of His Majesty's forces by sea or land, as His Majesty in his great wisdom shall judge necessary to make; and for concerting such measures as the exigency of his affairs may require." Parliament was on the eve of its dissolution, and the exigencies of the times were represented by the Ministers to be such that an address was moved to the Crown for the augmentation of the Forces during the recess.[2]

In 1739, all other Votes of Credit limited.

40. Where Votes of Credit have in later years been resorted to, they have been defined both as to their *amount* and *object*. Thus, in 1739 the Commons granted a specific sum, viz., 200,000*l*., upon account,[3] towards enabling His Majesty to carry on in the most effectual manner such measures as His Majesty shall judge necessary in the further prosecution *of the just war* in which His Majesty is engaged;" and it was so appropriated by 13 George II., c. 23, sec. 19.

In 1757.

41. Again, on the 19th May, 1757, the Commons resolved, "that a sum, not exceeding 1,000,000*l*., be granted to

[1] 22 Com. Journ., p. 449, and see 17 Geo. II., c. 33, sect. 22, and 24 Com. Journ., pp. 860-61. [2] 9 Parl. Hist., pp. 519-600. [3] 23 Com. Journ., p. 479.

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His Majesty to defray any Extraordinary Expenses of the War incurred, or to be incurred, for the service of the year 1757, and to take all such measures as may be deemed necessary to disappoint or defeat any Enterprises or Designs of his Enemies, and as the exigency of affairs may require;" and this Resolution was carried out by a special Act to raise and appropriate the amount.[1]

Debates on matters of financial control.

42. But though during the reign of George II., Parliament did not pass any Act for auditing Public Accounts, the subject was not left altogether without notice in the House of Commons. In February, 1739,[2] a motion passed in the negative, to declare, "that to apply towards defraying the ordinary charge of His Majesty's revenue, or to any head contained in the ordinary revenue thereof, any sum of public money exceeding the sum granted by Parliament for that purpose is a misapplication, and ought to be prevented;" and in March, 1743, the House inquired[3] into the method adopted by the Treasury in the remittance of public money abroad for the payment of the Army, but refused to pass a vote to impugn the conduct of the Department.

A.D. 1739-43.

Other measures adopted by the Commons to control expense.

A.D. 1743.

Army extraordinaries.

43. The Army Extraordinaries of 1743 gave rise to a debate on one item of 40,000*l.* which the General (Lord Stair) had ordered to be paid to the Duke D'Arenberg, "to put the Austrian troops in motion"—over and above the sum of 300,000*l.* voted by Parliament to the same person, and for the service of these troops. This sum was issued from the Paymaster-General's Department during the sitting of Parliament; upon which Mr. Lyttleton moved, "that the issuing and paying the sum of 40,000*l.* to put the Austrian troops in motion in the year 1742 was a dangerous Misapplication of Public Money,[4] and destructive of the rights of Parliament;" but an

[1] 27 Com. Journ., p. 901; 30 Geo. II., c. 23.
[2] 33 Com. Journ., p. 479.
[3] 24 Com. Journ., pp. 428-461; 13 Parl. Hist., pp. 1-43.
[4] 13 Parl. Hist., pp. 650, 675, 698.

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amendment declaring it "necessary for putting the said troops in motion, and of great consequence to the common cause," was adopted by the House in lieu of the original motion.

A.D. 1745. Select Committee on army expenditure.

44. The most important Inquiry during the reign was that which resulted from the Resolution of February, 1745:—"That a Committee[1] be appointed to consider the state of His Majesty's Land Forces and Marines, so far as relates to the distribution of the money granted by Parliament for the pay; to the number of effective men; and the methods of mustering and recruiting the said Land Forces and Marines." In June of the following year, a long and able Report was presented to Parliament, which may even at this date be usefully referred to for matters connected with Military Expenditure.[2]

Geo. III.'s reign—increase of military expenditure.

45. However, the reign of all others in which the Military Expenditure of the country increased was that of George III., whether that is judged of by votes in Parliament, or Reports made to the Crown and laid before Parliament, or to the increase of the National Debt at various periods in his reign. The National Debt when George III. came to the throne was 88,341,268*l.*; at the end of the American War it was 226,260,805*l.*; before the War of 1793, it was 238,231,248*l.*; after that war in 1800, it was 451,699,919*l.*; and at the end of the Peninsular War in 1817, it was 840,850,491*l.*

Policy of colonial defence.

46. During the same reign[3] the Policy of Military Colonial Expenditure, which had originated in 1754, was largely developed. In the earlier days of British settlements (in America, the East Indies and Africa) there was no Standing Army in England, and therefore, the people who made the first settlements—as the people of England did—defended themselves. The first instance of a Military occupation of a Colony was when the Imperial troops were sent to

[1] 25 Com. Journ., pp. 57, 166. [2] Vol. ii. Commons' Reports, pp. 73-211.

[3] See the late Mr. Godley's able paper, p. 319 of Report on Colonial Military Expenditure, 1861 [423].

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North America in the year 1754. These troops occupied the Colony as a Foreign Country for and at the expense of the Mother Country, and they owed their allegiance not to the Local Representative of the Crown—the Civil Governor appointed by the Crown—but to the General Officer in command. The Generals originally drew bills on the Paymaster-General as on *Foreign Service*, and these bills—from the reasons set forth in the Commons' address[1] to Queen Anne—were paid and charged to Army Extraordinaries. The Home Government (and consequently the Commons) therefore held only the same control over the Military Expenditure of the Army that it had when the latter was on Foreign Service, and lost in the Colonies the control which they exercised through the Treasury and War Office when the same troops were in England.

Military colonial expenditure beyond the control of Parliament.

47. Of course, had the troops been in the Colony at the expense of Local Funds, there would have been—as in England—the control of Ministers and their civil staff; but holding the Colony—in one possible aspect —against the Colonists, the latter were not so much interested in Frugality as benefited by the Extravagance of Military Expenditure. The necessity for putting some restriction, and of exercising some Financial Control over Officers in Colonial command (either as Soldiers or Governors) in respect to their Military Expenditure soon became apparent, and the Treasury, by their Minutes of November, 1764, and September, 1791, laid the foundation of that Financial Control, which they admitted not only to be essential, but to be held in their own hands.[2]

No Local control by civil departments.

48. Out of these circumstances two very distinct systems of Military Finance came into existence, and at the present time (modified by the arrangements of 1836) continue in operation. In the Home System the expenditure ought to be under the absolute control of the Minister of the Crown, responsible to Parliament; but in the Foreign and Colonial System, where the General officer is Supreme, and all the Local Departmental officers are under the Mutiny Act and under his command, the *Control* of the

Both systems are still in operation and in contrast.

[1] See par. 21, *ante*.

[2] See these Minutes in Appendix XXXII.*



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General's expenditure by these departmental officers is obviously a myth. It appears to some persons an open question, and they may mislead others, whether the Home System ought not to be abandoned for the Foreign System. That the Military expenditure should no longer be disbursed by Civil Servants acting under the directions of a Minister responsible to Parliament; but that it should be made by Military Officers acting under the command of their General. The Foreign or Colonial System was applied in 1792, in England, when the Barrackmaster-General's Department was established, and the result of that experiment is shown in a subsequent Chapter. No doubt the two Systems may lead to very opposite results—considered either with reference to Finance or Political expediency.

Increase in the Extraordinaries.

49. To recur to the expenditure for Extraordinaries in the German and American wars, Mr. Hatsell[1] gives the following "account of the extraordinary expenses incurred and not provided for in those periods:"—

| | £ | s. | d. | |
|---|---|---|---|---|
| "For the year 1758 .. | 466,785 | 10 | 5 | *Memorandum.*—In each of these years 500,000*l.* was voted upon account, and 1,000,000*l.* supply of credit; which should be added to these sums. |
| „ „ 1759 .. | 953,302 | 5 | 5 | |
| „ „ 1760 .. | 2,161,747 | 16 | 10 | |
| "For the year 1780 .. | 2,418,805 | 18 | 11 | To which is to be added 1,000,000*l.* voted in each year as a supply of credit." |
| „ „ 1781 .. | 3,343,217 | 19 | 8 | |
| „ „ 1782 .. | 3,437,399 | 6 | 0 | |

And shows the extent to which in later years they exceeded the amount of the ordinary Estimates[2] thus—

| | Voted upon Estimate. | | | | Extraordinaries, with the Supply of Credit. | | | |
|---|---|---|---|---|---|---|---|---|
| | £ | s. | d. | | £ | s. | d. |
| In 1780 .. | 4,384,693 | 2 | 1 | .. .. | 3,418,805 | 18 | 11 |
| 1781 .. | 4,377,317 | 9 | 0 | .. .. | 4,343,217 | 19 | 8 |
| 1782 .. | 4,381,368 | 1 | 5 | .. .. | 4,436,399 | 6 | 0 |

Abuses in military expenditure.

50. He then adds these observations:[3]—"In the late war carried on in America they exceeded all bounds. There was a degree of Negligence or Extravagance,

[1] 3 Hats. Prec., p. 211. [2] Ib., p. 212. [3] Ib., pp. 211, 212.

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or both, in those who had the conduct of this Department, which rendered all the votes of the House of Commons, or Bills for Appropriating the supplies, ridiculous and nugatory. The sums demanded upon the head of Extraordinaries of the Army incurred and not provided for, during this period, fell not very much short of the whole sums voted by Parliament upon Estimate for that service; nay, in the year 1782 they appear to have actually exceeded them. This was such a shameful Prostitution of the money of the Public, that—though perhaps the distance, and magnitude, and nature of the American war might be pleaded as some alleviation and excuse for the Generals abroad who commanded, or for the Ministers at home who ought to have controlled those Commanders—nothing can justify the House of Commons, who permitted this practice to continue uninterrupted through several sessions; and whose more immediate duty it was to have examined into the Contracts, and other Services stated to have been performed, and to have pointed out and punished those frauds and abuses which were afterwards with no great difficulty detected and exposed by the Commissioners of Public Accounts."

51. Then, after referring to the votes of credit, he continues[1]—

"It is therefore incumbent upon the House of Commons not only to make this supply of credit as small as possible, but in a subsequent session to inquire into the particular Expenditure of the sum granted; and to be assured that it is strictly applied to those purposes for which it was intended, and not squandered loosely, improvidently, wantonly, or perhaps corruptly. Duty of the Commons.

"Whoever examines with accuracy the Accounts which were delivered into the House of Commons during the American war, under the title of 'Extraordinary Services incurred and not provided for,' will find in them several articles so strange, so unconnected with the account of which they make a considerable part, and in themselves obviously so unnecessary, that the observations and expressions which are used here will not appear harsh or inapplicable." Expenditure in the American war.

[1] 3 Hats. Prec., p. 214; and see Debate on Mr. Grey's charges, 32 Parl. Hist., pp. 1062, 1094.



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52. The Influence of the Crown was probably at its height when the attention of Parliament was directed[1] to what passed under the cover of Military Expenditure. In the year 1778, after an angry debate, the House appointed a Committee to *consider and examine;* but *to report* was *not* within the terms of the order of reference. In the following year, in March, 1779, when the Extraordinaries had increased to an alarming extent, Sir P. S. Clarke, ventured to move[2] "that the account between 31st January, 1778, and 1st February, 1779, be printed for *the use of the members;* but Lord North opposed the motion as totally unprecedented. "The hon. gentleman had *said* that the Estimate was a matter which concerned the Public; it was very true it did, but he could never allow that if by the Public the hon. gentleman meant the *populace*, the *readers of newspapers, and coffee-house readers*, that *they* had a right to see it. The real public—the representatives of the Commons of England, the members of that House—*he owned* had; but he declared he never would give up the point that People without doors had *any* right to see it before it appeared on the Journals of the House."

A.D. 1778.

Select Committee of the Commons on Extraordinaries.

Refusal to print same for use of Members.

53. Some of the leading members of the Upper House were not indifferent to these abuses, and the Earl of Shelburne,[3] in December, 1779, moved "That the alarming addition annually making to the present enormous national debt, under the head of Extraordinaries incurred in the different services, requires immediate check and control. The increasing the public expense beyond the grants of Parliament being at all times an invasion of the fundamental rights of Parliament, and the utmost economy being indispensably necessary in the present reduced and deplorable state of the landed and mercantile interest of Great Britain and Ireland;" but the Ministers were all silent, and the motion was lost by a majority of two to one.

Lord Shelburne's two motions in the House of Lords.

54. Lord Shelburne[4] then gave notice of another Resolution

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[1] 36 Com. Journ., pp. 700, 871, 898; 19 Parl. Hist., p. 974.
[2] 37 Com. Journ., p. 283; 20 Parl. Hist., p. 328.
20 Parl. Hist., pp. 838, 1286. [4] Ib. pp. 1318, 1366.

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for February, 1780, and upon the day appointed, he moved for an inquiry into the public expenditure by Committee of members of both Houses. The motion was understood by some peers[1] as directed against the undue influence of the Crown, and was lost.

55. The subject was, however, too important to be permitted to rest, and Mr. Burke called the attention of the Commons to it first, by giving notice[2] of his plan for financial reform (on the same day in December as the Earl of Shelburne's motion in the Lords), and then by presenting that plan to the House in his celebrated speech delivered in February, 1780.[3] Colonel Barré followed up Mr. Burke's motion by suggesting that Commissioners of Audit should (as formerly) be appointed to examine the Public Accounts.

A.D. 1780.

Mr. Burke's plan for economic reform.

56. The Country at length became aroused, and meetings were held to petition Parliament for measures of relief. These Mr. Dunning brought to the notice of the Commons in April, and succeeded in carrying his well-known Resolutions:[4]—"1. That it is necessary to declare that the influence of the Crown has increased, is increasing, and ought to be diminished. 2. That it is competent to this House to examine into and correct abuses in the expenditure, or the Civil List Revenues, as well as in every other branch of the Public Revenue, whenever it shall appear expedient to the wisdom of this House so to do. 3. That it is the duty of this House to provide, as far as may be, an immediate and effectual redress of the abuses complained of in the petitions presented to this House, from the different countries, cities, and towns of this kingdom."

Mr. Dunning's resolutions against the influence of the Crown.

57. But the Ministry, though no longer able to resist the Audit of Public Accounts, was sufficiently strong to pass the Bill in such a manner as to deprive the Commons of one of their previously admitted rights, —viz., of auditing by their own members, or by their own Commissioners, all public moneys. Lord North, in introducing

Audit Act, a violation of the rights of the Commons.

[1] Lords' Protest. [2] 20 Parl. Hist., p. 1294. [3] 21 Parl. Hist., p. 1.
[4] 37 Com. Journ., p. 763, and 27 Parl. Hist., p. 340.

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the Bill, intimated to the House that the Commissioners would *not* be members of that House chosen by ballot, but that *he* should propose for its adoption the names of gentlemen to act as Commissioners.[1]

Two of the proposed Commissioners were in the pay of the Crown.

58. In all previous instances the Commissioners had been wholly independent of the Crown, and not members of the Military Profession. In the case of two persons named by the Minister,—General Carleton and Mr. Bowlby (the Comptroller of Army Accounts),—both these conditions were violated. Against the appointment[2] of the General it was urged that it was wrong to employ men in *direct opposition* to their profession, and to disgrace a brave officer by turning him into a clerk. As a Military Officer—that he was incompetent, from his want of familiarity with accounts and papers, and, as the holder of pay and other military emoluments, that he was *not* independent of the Crown; lastly, that he was personally accountable, as Commander-in-Chief in Canada, for the expenditure of some portion of the money that was to form the subject of inquiry. General Carleton was, however, appointed an Audit Commissioner, but the name of Mr. Bowlby was withdrawn.

Extraordinaries referred to the Commissioners.

59. The Act (20 Geo. III., c. 54) was limited to Accounts for Services performed since the 1st of June, 1776. In the first instance, "the several accounts of Extraordinary Services laid before the House of Commons since that date" were not referred to the Commissioners, but in the next session these accounts were sent to them under the authority of a separate Act.[3] The Commissioners presented fifteen reports to Parliament in the interval between the 13th March, 1780, and the 19th December, 1786, which were the basis of Mr. Burke's Act, and of other departmental arrangements to insure to the House of Commons a more effective control over the Military Expenditure of the Crown.

60. With regard to the Ordinary Expenditure on Estimate,

[1] 21 Parl. Hist., p. 278.
[2] Ib., pp. 552, 556, 558, 567; 37 Com. Journ., pp. 812-845.
[3] 21 Geo. III., c. 45.

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a practice had grown up under the authority of Royal Sign Manual Warrants of applying moneys voted as pay of men, to Regimental or General purposes. Thus these sums became *bounties* to these objects from the *Crown*, and not, as in fact they were, votes *from Parliament* in their favour. That these appropriations were known by the Commons to exist is clear, for the vote for a larger number of men than the Opposition desired was often justified by the Ministers upon the ground that the vote represented more men, by a given percentage, than would be arrayed in Arms. However, the Commissioners in their 9th Report, brought this practice to the notice of Parliament, and Mr. Burke's Act was intended to abolish it.

Pay of the army applied to various objects for which it had not been voted.

61. If that Act[1] be referred to it will be seen that the Commons imposed a definite duty on the same Minister, viz., the Secretary at War, whom Parliament had selected for another constitutional function.[2] Having fixed on the 25th December as a date from which each financial year should commence,[3] and, having laid down the Services for which Estimates should be prepared (sec. 19, 24, & 29), the Act required and directed the Secretary at War (1) to prepare these Estimates for Parliament, (2) when voted by Parliament, to transmit them to the Paymaster General, to disburse the Supplies, and (3) to examine and settle the Accounts of the Expenditure annually, within a definite period (sec. 35). By this enactment, which has never been repealed, all the *ordinary* expenditure of the Army was placed in the hands of a Parliamentary (Civil) Minister and brought under the control of the House of Commons.

Altered by Mr. Burke's Act.

Secretary at War's duty as to ordinary expenditure.

62. The *Extraordinaries* of the Army formed the subject of the Commissioners' seventh Report, which was laid before Parliament on the 19th June, 1782. The Expenditure was in the hands of the Military depart-

Commissioners' Report on Extraordinaries.

[1] The 22 Geo. III., c. 81, was the original; but it was repealed by the 23 Geo. III., c. 50, and other provisions, many of which are still in force, re-enacted.

[2] See Chap. IX., pars. 18 to 29.

[3] Sec. 18. By Office arrangements, it was first altered to 1st January, and then to first April (1833). The Militia year would seem to be up to 31st July (see Pay and Clothing Act).

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ments—as of the barrack-master, the quarter-master, and other officers on the staff of the Commander-in-chief, and acting under his orders, without any Civil control or agency. The abuses of a Barrack-master's department *in England* will hereafter be noticed;[1] therefore those of the Quartermaster-General's department *in America* will be used for illustrating the subject dealt with in this chapter.

Abuses in the expenditure made through military officers.

63. The main facts reported to Parliament were that the General in Chief Command acted upon the advice of the Quartermaster-General's department in fixing (1) the establishment for transport; and (2) the cost that was to be paid to the owners of it.[2] Assuming the advice to be disinterested, the tender and acceptance of it was unexceptionable. In addition to offering this advice, the Officers of the same Department made the payments for these Services, and others of the *same department* (for it does not clearly appear that the *same officer* was always the agent of the public and the owner of the transport) owned the Transports that were thus paid for by the Public. The Commissioners estimated the Financial effect of these arrangements at the sum of 417,592*l.* lost to the public, though gained by the officers of the Quartermaster-General's Department.

Conflict between pecuniary interest and public duty.

64. The Commissioners in their Report then comment on these facts in terms of censure:—"It is the duty of these Officers to make the Contracts for the articles,[3] and to see those contracts honestly and substantially performed; to take care that each article is properly equipped, and adequate to the service it is intended for, and that the service for which payment is claimed, has been, in fact, performed. These officers are placed, on the part of Government, as a Check and Control upon the Contractors, to protect the Public from loss or imposition. The Barrackmaster-General and Chief Engineer stand upon the same ground, in respect to the waggons and horses made use of in their Departments, and not provided by the Quartermaster-General. But it has been

[1] Chap. XII.

[2] Com. Rep., pp. 128-130, 135.

[3] 7th Rep., pp. 130, 131.

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the usage, as far back as our inquiry has gone, for the Officers in these Departments to be themselves the Proprietors of, or to have shares or interests in, a great number of the Vessels and Small Craft, and in almost all the Waggons and horses, employed in these Services. These officers have purchased or procured them upon *their own account*, and let them out to Government at the fixed prices of hire; the same person, employed by and acting for the Public, contracts, on the part of the Public, with Himself, for the hire of his own property, controls his own actions, and pays himself with the Public money intrusted to his charge; his trust and interest draw opposite ways; his trust obliges him to be frugal for the Public; to hire at the lowest price (lower, if he can, than the price allowed by Government); to take care that what he hires is complete and fit for service; to employ as few vessels and carriages, and for as short a time, as possible; but his interest leads him not to spare the Public Purse; to let to Government at the same fixed price, all the vessels, carriages, and horses he can collect, by whatever means procured, or at however low a price he may have purchased them, and whatever may be their condition or difference in point of goodness; to keep them continually in pay, whether wanted, or employed, or not, and for as long a time as he can contrive; and his last advantage may be the suffering them to be taken or destroyed by the enemy, to entitle him to the value from the Public."

65. The remedy which the Commissioners suggested shall also be given in their own words:—"It is of public concern this evil should be speedily corrected.[1] It flows from permitting a trust to reside, with an interest, in the same person. The remedy is to take away the interest, and by that means to restore the trust and control to its full force, that it may freely operate for the benefit of the public, uninfluenced by private considerations.

Remedy, how to be sought for.

66. "But the remedy may be extended still farther. It should seem as if it would be more beneficial to the service if the officers were relieved entirely from the trouble of making the payments. When their

Found in intrusting financial duties to civil servants.

[1] 7th Rep., p. 138.

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Military Duty calls them to the field, they must neglect their duty as Paymasters, and leave that branch to be conducted entirely by their inferior officers and clerks. It seems to be a hardship upon a Quartermaster-General to be subject to account for very large sums, no part of which he paid himself, but merely because they were paid in his name, and at his office, whilst he himself was absent upon other duty. *There is no necessary connection between the military duty of these officers and the expenditure of money for military services. This latter belongs properly to a civil department, and may be executed by a civil officer.*"

Value and effect of these recommendations.

67. How far these recommendations—so consistent with expediency—and so accordant with the principles of the division of labour which, for the ten years preceding their Report, Adam Smith had laboured to enforce upon the world, in his great work on 'The Wealth of Nations'—were adopted—and what has been their effect, in preventing the recurrence of similar abuses in the Military expenditure of future years, will be seen when the History of those branches of the Army—the Commissariat and Store Departments, which were *civil* servants *until* 1858—is examined. It is sufficient for the present purpose to notice this fact, that these Commissioners, like those of 1806, and of the Treasury in 1807,[1] did not flinch from declaring their opinion—irrespective of other considerations—that they deemed the *best* security to the Public would be to entrust expenditure to *Civil* servants of the Crown, acting under the Control, *not of General officers*, but of the highest civil department in the State, viz., the Treasury.[2]

A.D. 1785. Commissioners for the audit of public accounts established.

68. One of the other measures adopted in consequence of these Reports for the Control and Audit of Military Expenditure, was the establishment of Auditors appointed by the Crown, under the 25 Geo. III., c. 52, by patent and holding office "quamdiu de bene gesserint," and the abolition of the Crown Auditors of

[1] Chap. XII., pars. 40, 42.

[2] Appendix H., Note on the Employment of Civil Servants.

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Imprest. How far the control extends, and the security which is thus given to the public by this machinery, will be considered in a later chapter. *Until* the old practice of Army Extraordinaries was abolished, much responsibility rested upon the Audit Board.

69. The House of Commons, after the recommendations which these Reports contained had been carried out, had little effectual control over the *Extraordinaries* of the Army—*so little* control, that it was possible for the Crown in 1792-3 to establish two Military Departments out of these moneys—without the previous sanction of Parliament being obtained. The Expenditure was, however, made through the channels of the Civil Departments of the Treasury, Ordnance, or War Office; and the Commons had this security,—which has ceased,—that *several* Members of their own House were, as Members of the Administration, for the time being in Office, cognizant of the payments, and able (if willing) to control expense.

Commons had no control over Army Extraordinaries except through Departments.

70. It was the Government of Earl Grey in 1833—as the first-fruits of Reform in Parliament—that originated the plan of bringing before Parliament on Estimate *all* the Military Expenditure of the Country. The substance of the plan, as relating to the Army Estimates, is shown in the Treasury Minute of August, 1834. The clauses 1 and 2 stated the intention, thus:[1]—

Army Extraordinaries voted on Estimate since 1836.

"(1.) The whole expenditure of the Army, both at home and abroad, to be included in the Army Estimates.

A.D. 1834.

"(2.) The various allowances to the troops at foreign stations, and all the other charges now defrayed out *of the Army Extraordinaries*, to be classed and specified in detail in the Estimates, as far as may be found practicable; and all such charges as are of too casual and uncertain occurrence to admit of being detailed to be provided for in the Estimates in one sum, under the head of 'Military Contingencies.'"

Plan for the expenditure.

[1] Civil Administration of the Army, 1837, p. 14*a*.

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71. It was proposed in the 4th and 7th clauses to give to the Secretary at War nearly the same control over the "extraordinary" as Mr. Burke had given to him over the ordinary expenditure of the Army; the whole security being based on the fact of his being a responsible Minister, wholly independent of Military Influence, and therefore to be trusted with the control of a *questionable* expenditure.

Plan of estimates first proposed.

72. "All payments in respect of allowances which are fixed and warranted by regulation to be under the control of the Secretary at War, in the same manner as the disbursements for ordinary Army services now are; all payments *not warranted by regulation*, but which, under any special circumstances, commissaries may be required to make by warrant of the officers commanding, to be reported by the latter to the *Secretary at War*, and *his* decision thereon to be a *sufficient* authority for passing or disallowing such payments (as the case may be) in the commissariat accounts, subject always to the final control of the Treasury, when the states of the accounts shall be laid before their Lordships by the Commissioners of Audit.

Secretary at War to decide on all doubtful cases of expenditure by the General officer.

73. "Upon the receipt of each monthly set of accounts at the Audit Office, an inspection thereof to take place immediately, and all charges *not warranted* by regulations, *or of a questionable nature*, or which may not have been previously authorized by the Secretary at War, to be submitted by the Auditors to the Secretary at War, whose decision thereon, communicated by him to the Auditors, to be sufficient authority to them to pass such charges to the credit of the Accountant. All vouchers also, and other documents which may be necessary for the purpose of adjusting the accounts at the War Office, and of causing the several items of Army expenditure to be brought to account, under their proper heads, in the books of the Paymaster-General, to be selected from the accounts, and forwarded by the Auditors to the Secretary at War, at such time and in such manner as he may require."

Monthly inspection of accounts at Audit Office.

74. The plan ultimately adopted[1] was,—to place all the

[1] Civil Administration of the Army, 1837, p. 17 *a*.

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charges that were sanctioned by long-established usage into the Ordinary Estimate under the Secretary at War's control; but as to all the Extraordinaries, the Treasury decided these could *only properly* be administered under the immediate control of *that Board*, through the Commissariat. The absolute control of the Extraordinaries was therefore vested in the Treasury, acting with the advice and assistance of the *Civil Administrative* officers from time to time serving with the Army abroad, but *under the Treasury*.

Plan ultimately adopted.

75. It will be considered at greater length hereafter, whether the Public have the security that was designed when these arrangements were made. The office of the Secretary at War has been abolished, and the personnel of the Secretary of State's office altered. The Commissariat officers have ceased to be Civil servants of the Treasury, and are among the most zealous Military Officers under the Command of the General whose Expenditure may be the subject of Control. However, since 1836, Army Extraordinaries have been abolished, and the House of Commons has the power of seeing the total of moneys that it is the intention of the Ministry for the time being to devote to Army purposes.

Whether equal security now exists, doubtful?

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# CHAPTER VIII.

## THE MUTINY ACT.

The necessity for the Mutiny Act admitted.

1. THE condition in which the country was placed, and the existence within it of several thousand soldiers, some of whom gave only a Nominal Allegiance to William III., rendered it essential to exercise over the Army a lawful authority for the suppression of disorder, and for the maintenance of discipline within its ranks. This necessity, so apparent, was brought under the notice of the House of Commons[1] on the 1st of March, 1689, in the debate on the suspension of the Habeas Corpus Act; and it was in this state of feeling that —as set forth in Lord Macaulay's 'History of England'[2]— the circumstances arose which were the immediate cause of the first Mutiny Act.

Circumstances that were the immediate cause of it.

2. William III. came to take possession of the Throne accompanied by his *Dutch* guards, it was therefore a matter of Political importance to send away such of the *British* troops as were favourably disposed to the cause of King James. This could be done to some extent by shipping them to Holland under a Treaty of Alliance with the United Provinces; and therefore the Order of the 8th of March, 1688-9 (given in the Appendix[3]) was issued, for certain regiments to march to the sea coast, and embark for Holland. It was partially obeyed, but, when the troops arrived at Ipswich, a mutiny broke out:[4] 800 men marched out of the town with four pieces of cannon towards the North, declaring James II. to be *their* King, and that they would live and die by him. The circumstances did not admit of delay, and upon the 13th leave was given in the Commons to bring in a bill to punish Mutiny and Desertion *for a limited time;* which passed the

[1] 5 Parl. Hist., p. 154. [2] Vol. iii. p. 45.

[3] See Appendix XXXIII. for this Order; and XXXIV., XXXV., for Letter and Order as to the Mutineers. [4] 10 Com. Journ., pp. 49 to 73.

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Commons, was sent up and agreed to by the Lords on the 28th, and received the Royal Assent upon the 3rd of April.

3. The Act, which is rarely found in editions of the Statutes, is printed in the Appendix,[1] and consists, as it will be seen, of ten sections only. It was confined to the single purpose which its title indicates, and although in later years many other subjects have been added, yet in the *present* chapter, this and later Mutiny Acts will be considered with reference *only* to the punishment of Mutiny and Desertion by Courts-martial acting under Statutory authority.

Provisions of the Mutiny Act, 1 W. & M. c. 5.

4. Short as was the time which the circumstances allowed for passing this Act, the House of Commons did not fail to deal with the unsettled question of Prerogative relating to "Martial Law." If it conceded exceptional powers to the Crown for the punishment of *soldiers* on the one hand, it restrained the Crown in the exercise of the undefined prerogative of declaring Martial Law against the *civil community* on the other.

Limitation on the Prerogative of the Crown as to Martial Law.

5. The preamble states the proposition broadly, and without limitation, "that no man may be prejudged of life or limb, or subjected to *any kind of punishment* by martial law, or in any other manner than by the judgment of his peers and according to the known laws of the realm;" and throughout the reign of William III. this statement of Constitutional Law stood without qualification. In 1st Anne, stat. 2, c. 20, the words "in time of peace"[2] were inserted after "subjected," and have continued in every later Mutiny Act.

Preamble of the Mutiny Act, and amendment thereof by 1 Anne, c. 20.

6. Passing to its enactments, the Act, as will be noticed, declares certain offences and punishments, and a legislative sanction is then given for the assembling of Courts-martial for the trial and punishment of persons made liable to its provisions. Express declarations are found, (1) that the Act should not exempt any officer or soldier from the

Enactments of the Act.

[1] Appendix XXXVI.

[2] See the discussion on the original preamble, and on these words, in the Evidence on Martial Law in Ceylon, 1849-50, vol. xii. p. 176 et seqq.

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ordinary process of law, (2) that it should not extend to or concern the Militia forces of the kingdom, (3) that its operation was confined to England.

Parliament has not ceded its power over the Army to the Crown exclusively.

7. It would be unnecessary to remark—if a contrary theory of military administration were not occasionally put forward—that Parliament, in conceding these powers to the Crown, had no intention of abandoning all further care for the Soldier, or for any other persons made liable to Military law. In the first place, by a constitutional rule regulating the Public Departments of the State, the carriage of the Mutiny Act through the House of Commons has always been committed to a *civil Minister*, and the Articles of War have always been framed by the *same civil servant* responsible to Parliament for the discharge of this duty. "In framing this code, the Secretary at War is a check on the Commander-in-Chief, inasmuch as he draws the Articles of War, and signs them on the King's authority. When the liberty of the subject and civil rights are involved, this duty of framing the code is left to the *Civil* officer—the Secretary at War—who has to discuss and pass the Mutiny Act through the House of Commons."[1] And, in the next place, our constitutional history will show that Parliament has ever watched with a most jealous eye the action of the Ministers of the Crown in respect to the Mutiny Act and Articles of War.

Military not a separate caste—but entitled to Civil Rights as Citizens.

8. The Statesmen of William III.'s, and of later reigns, endeavoured to protect the civil community from the political danger that would result from the isolation of the army from the people, and the creation of a *caste*, or distinct order of men, obeying *only* the orders of the Crown without any regard whatever to the welfare of their fellow-subjects. All that the Subject as a free citizen gives up upon entering the Military service of the Crown are such of his rights as are incompatible with the discharge of his duty as a Loyal Soldier, serving a Constitutional Sovereign.[2] Wher-

[1] Lord Hardinge's Evidence before the Committee on Civil Administration 1837, p. 26, and see also his Speech, 11 H. D. (3), p. 1228.

[2] See War Office Circular, 1689, in Appendix XXXVII.

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ever the duties of a Soldier and of a Citizen conflict, the latter, subject to this condition, must prevail; but the law is clear beyond controversy, that a Subject by becoming a Soldier under the Crown does not cease to be a Citizen, and that his rights as such are only *partially* in suspense during the *period* of his enlistment. "It is highly important that the mistake should be corrected, which supposes that an Englishman, by taking upon himself the additional character of a soldier, puts off any of the rights and duties of an Englishman."[1]

The duty of Parliament to guard these Civil Rights for the Soldier.

9. It is therefore the duty of Parliament,—for the safety of the civil community depends upon its vigilant exercise,—to guard these rights so scrupulously that the Soldier may rely with implicit confidence upon this protection, and never, under any circumstances, be tempted, either against the Crown or against Parliament, to assert them for himself—the cause, as it is admitted, of political disorder in the reign of Charles I. and during the Commonwealth.

Controversy between the Crown and Parliament on questions arising on the Mutiny Act and Articles of War.

10. The Affairs of the Army have been a source of perpetual conflict between the Crown and Parliament. No part of the controversy has been carried on with greater constancy than the questions which the Mutiny Act and Articles of War gave, and indeed still give rise to. It has been the object of Parliament to define the limits within which the Crown, acting directly or through the agency of courts-martial, may award punishment; to substitute a *certain* rule laid down by the Legislature for an uncertain rule of government and punishment which the Crown upon the advice of Executive Officers (not of responsible Members) may alter at any time,—subjects that will be very briefly noticed in the present chapter.

I. As to the Articles of War made by the Crown.

[1] Burdett *v.* Abbott, 4 Taml. Rep., 450—the terms "Citizen" and "Englishman" are treated as synonymous throughout Sir Jas. Mansfield's Judgment. See Sir Robert Peel's Speech on Somerville's Case, 14 H. D. (3), p. 46; 30 ib. pp. 559, 675, 776, 1439; and 31 ib. pp. 147, 779.



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Articles of War before and after the Mutiny Act.

11. When the first Mutiny Act was passed, the Army was governed entirely by Articles of War. Courts-martial were held, and punishments inflicted under this Military Code; and though the Mutiny Act made no reference to Articles of War, yet it expressly adopted the Tribunals established under them. When the Act came into operation for the punishment of the crimes thereby made capital, it was essential that the Courts-martial should be constituted and formed as directed by its provisions; but for the punishment of lesser offences these Courts and their proceedings were not interfered with.[1] Even in matters of life and death, the Articles of War laid down rules,[2] and the Warrants issued by the Crown for the assembling of Courts-martial give evidence that the Army continued to be governed by Articles of War[3] long after the passing of the first Mutiny Act, and before Parliament gave any express sanction to them.

Power to make Articles of War conferred on the Crown.

12. The Mutiny Act of 3 Geo. I. was the first that, in express terms, gave the Crown the power of making Articles of War for the better government of His Majesty's forces *within* the Kingdoms of England and Ireland. In the earlier Acts, dating from the 1st Anne, c. 16, a reference had been made to Articles of War; and in that Act,—which extended to Ireland, and gave to the Crown an express power[4] to issue Warrants for the establishment of Courts-martial for the trial of Soldiers committing offences *out* of the realm of England or upon the seas,—a proviso was inserted that nothing contained in it should abridge the power of the Crown to make Articles: to erect Courts-martial and to inflict penalties by sentence thereof "in such manner as might have been done by His Majesty's authority beyond the seas in time of war before the making of the Act." But the 3rd Geo. I. gave the Crown express authority to make[5] and constitute, under Royal

[1] See Report of 1694, in Appendix XXXVIII.

[2] Court-martial Warrant, 9 Feb. 1696-7, in Appendix XXXIX.

[3] Court-martial Warrant of 1697, in Court-martial Book, p. 150.

[4] Sec. 36 to 44, and 12 Anne, c. 13, sec. 43 and 44.

[5] The Articles in force were laid on the table of the House of Commons, and are printed 18 Com. Journ., p. 708. I believe they were entirely recast after they had Parliamentary sanction. See Papers in Appendix XL.

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Sign Manual, Articles for the better government of His Majesty's forces as well *within* the Kingdoms of Great Britain and Ireland as beyond the seas, and inflicting pains and penalties to be pronounced (upon the sentence or judgment) in Courts-martial to be constituted pursuant to the Act.

13. The Articles of War[1] issued in 1717, made provision for the trial by court-martial of *ordinary civil* offences committed by soldiers; and the Mutiny Act expressly declared that conviction or acquittal of any person by a Court-martial should be a *full* bar to *any* indictment or proceeding for the same offence,—and when the Mutiny Bill for 1718 came before Parliament the subject gave rise to great controversy.

A.D. 1718. Debate on Articles of War.

14. It was objected that, by enabling the Crown to establish Articles of War, to determine offences, and to inflict punishments, Parliament had vested in the Crown the sole legislative power over the Army. The Lords' Journals contain this protest:—"Because the clause in this Bill, enabling His Majesty to establish Articles of War and erect Courts-martial, with power to try and determine any offences to be specified in such Articles, and to inflict punishments for the same, within this Kingdom in time of peace, doth (as we conceive) in all those instances vest a sole legislative power in the Crown, which power, how safely soever it may be lodged with His present Majesty, and how tenderly soever it may be exercised by him, may yet prove of dangerous consequence, should it be drawn into precedent in future reigns."

Objection that Parliament had conferred a sole legislative power on the Crown.

15. Two remedies presented themselves. The first was to enact the Articles of War (by inserting them) in the Mutiny Act, in like manner as the articles and orders for governing the navy were set out in the 13 Car. II., c. 29, a proposal which was rejected by the House of Lords;[2] and the other was to declare that no person should suffer any punishment extending to life and limb by the Articles of War, except for such crimes as are expressed to be so punish-

Two remedies:— 1. Incorporating Articles in the Mutiny Act. 2. Limiting the Punishment by the Mutiny Act.

[1] See them in extenso, vol. iv. of Tindal's 'England,' p. 559; 19 Com. Journ., p. 60.

[2] Lords' Protest, 7 Parl. Hist., p. 550.



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able by the Mutiny Act, a limitation on the power of the Crown which was inserted in the Mutiny Act for 1748, and has since remained upon the Statute Book.[1]

A.D. 1728. Lord Hardwicke's report on the last question.

16. But before this limitation was thus expressly *enacted*, the Crown had been advised by Lord Hardwicke, when holding the office of Attorney-General in 1728, that it would not be legal to increase the capital offences by the Articles of War beyond those enumerated in the Mutiny Acts. The Report of the Attorney-General, and some subsequent correspondence, are printed in the Appendix. The question arose upon instructions sent to him by the Secretary-at-War, to frame an Article of War making the offence of striking an officer punishable with death: provided (as the instructions ran) such an alteration was not contrary to the intent and meaning of the Mutiny Act. In the opinion of Lord Hardwicke, it was not competent for a Court-martial to punish any offences with death except such as the Act described, and further that the Articles could not, as the law then stood, be framed to give that court such a power.[2] "I humbly submit," continued the Report, "whether it will be advisable to endeavour at any additions to that law in the ensuing Parliament, considering how *new* attempts of that kind are generally received in Parliament; but if it shall be His Majesty's pleasure that anything of this nature should be proposed, I will endeavour to prepare some clause or words that may answer the intention."

Mutiny Act amended accordingly.

17. It was deemed advisable to make such an application to Parliament; and therefore in February, 1729, the Deputy Secretary-at-War (Mr. Arnold), again urged the Attorney-General "to take into his consideration what might be necessary to be done by way of amendment, as the Mutiny Bill was soon to be offered to the House, and new Articles of War to be prepared for His Majesty's signature conformable to it." The result was the insertion of the words "or shall strike or use violence against his superior officer being

[1] 14 Parl. Hist., pp. 425 to 460, and compare 21 Geo. II. with 22 Geo. II. and Mutiny Act, 1868.

[2] See Appendix XLI.—various Reports on the Mutiny Acts and Articles of War.

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in the execution of his office," which are now to be found in the 15th section of the Mutiny Act, 1868. "As to the amendment," wrote the Attorney-General, "I have made it a *superior* officer, agreeable to Mr. Arnold's instructions to me; but if it is intended to extend to *all* officers being in the execution of their office, the word "superior" may easily be left out. I have also confined it to the being in the execution of their office, because I took it not to be designed to make every striking of an officer, though in a sudden accidental quarrel, punishable with death."

General questions on the Articles of War.

18. To consider the Articles of War in detail would lead to a long digression from the object to which the present chapter is devoted, therefore only a few observations upon the principles involved in them will be offered to the reader's notice.

They are applicable to all persons liable to the Mutiny Act.

19. In the first place, it must be accepted as the law that all persons who, as soldiers, are made subject to the provisions of the Mutiny Act are also to be held subject to the legal provisions of the Articles of War. In writing of the Militia in 1801, the law officers[1] advised the Crown that the law put that force, when in actual service, under the control of the Mutiny Act, and *consequently of the Articles of War.*[2]

They are not applicable to other persons than those liable to the Mutiny Act.

20. The converse of this proposition is also equally true, viz., that no person can be made subject to the Articles of War who is not liable to the provisions of the Mutiny Act. "I am most anxious, as a constitutional judge, that it should be fully understood to be my opinion," said the late Lord Campbell,[3] "that none are bound by the Mutiny Act or the Articles of War except Her Majesty's forces."

21. The Crown, in framing the Articles of War, must there-

[1] Sir John Scott and Sir John Mitford. [2] Bk. 724, p. 263.

[3] Wotton *v.* Gavin, 16 L. B. Rep. 61, and see Dawkins *v.* Rokeby, 4 Fos. and Fin., p. 831. L. O. Report, 5 Mar., 1744.—Appendix.

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fore confine their operation strictly within the terms of the Mutiny Act, both as to the persons liable to punishment and as to the powers to be exercised thereunder. This latter point came under the consideration of the responsible advisers of the Crown in 1748, upon a proposal then made to direct the punishment of *death* by the *Articles of War*, in a case where the Mutiny Act gave the Court-martial a *discretion* to award any *other* punishment. Upon this suggested alteration, the law officers were consulted, and they wrote decidedly [1] that it ought not to be made, and, even if made, that the discretion would continue vested in the Court-martial by virtue of the Mutiny Act.

Articles must strictly follow the Mutiny Act.

22. The terms in which the power to make Articles of War is conferred upon the Crown contain this single definition of their object, viz., the better government of His Majesty's Army. If, therefore, the Crown should assume to deal with matters foreign to the *government* of the Army, as with the rights or property which the officers and soldiers are entitled to as *citizens*, these Articles would, under the ordinary rules of construction, be *ultra vires* and not be such as the law would enforce.[2] Indeed the Articles can extend no further than are deemed to be necessary purposes for the regularity and due discipline of the Army.

Articles not warranted by the Act *ultra vires*.

23. What restraint can be laid upon an Officer and Soldier by the Articles of War, so as to prevent actions for damages before the Common law courts for wrongs or civil injuries alleged to have been committed by a brother officer or soldier acting either under command or from a sense of duty as a superior officer, has recently engaged the notice of those tribunals. If, between comrades, actions of assault or battery had been encouraged by the Common law, such cases might have been abundant, and if actions for torts,

Restraint upon civil proceedings imposed by Articles of War.

[1] Bk. 721, p. 78, and Appendix XLII.

[2] Lord Loughborough. Grant *v.* Gould, 2 H. Bla., p. 100. Foster *v.* Dodd, 6 B. and S., 169.

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as false imprisonment, slander, libel, had been entertained, the discipline of the Army would long since have been destroyed. From the earliest period the Articles of War have provided that all these offences should be referred to and decided by the officers in superior command, an ultimate appeal being given to the Sovereign as the Head of the military profession, and, unless the Army is to degenerate in its character, that rule must, on the grounds of public policy, be strictly adhered to. To take the Army out of the control of the Crown, by giving jurisdiction to the Common law tribunals for the redress of professional grievances, would, in the opinion of the judges themselves, be in the highest degree inexpedient, and hence these courts have uniformly, and especially in recent instances, declined to entertain such complaints.[1]

II. As to the Mutiny Act.

24. When Parliament gave its sanction to the Court-martial system existing at the date of the first Mutiny Act, it imposed few restrictions upon this method of administering Justice. The manner in which these Courts were assembled, and how they discharged their functions in matters of life and death, during the reign of James II. and William III., are seen from the records of their proceedings, printed in the Appendix.[2] The same forms were observed, though some conditions were imposed by Parliament,—as, that the Court should sit between 8 A.M. and 1 P.M.,—that the evidence should be *on oath*, and that not less than nine out of thirteen members should agree upon the verdict against the prisoner.

Court-martial system established with Parliamentary sanction with few restrictions.

25. But the Act was for many years most unpopular in Parliament, and was usually opposed on one or other of these objections:—

(1.) That it is in the highest degree inexpedient

Opposition to the Mutiny Act, as sanc-

[1] Keightley *v.* Bell, 4 Fos. and Fin., p. 798; Dawkins *v.* Rokeby, ib. p. 833; Freer *v.* Marshall, ib. p. 485.

[2] Appendices XXII., XXIII., XXXVIII., and note, and No. XXXIX. (1 and 2).

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tioning military tribunals.

to sever the members of the Army from their fellow-citizens by a special code of laws, either to ennoble or to degrade them, and—by such a distinction—to induce them to use their power in the exercise of their privileges or in revenge for their disgrace.[1]

(2.) That as Courts-martial violate every principle upon which justice is administered in England, the Civil Magistrate, in the time of *peace*, should have jurisdiction for the suppression of *all* crime.

(3.) That the Mutiny Act—in regard to criminal offences declared by or under its provisions—renders the life, liberty, or fortunes of every one subject to it, so *in*secure, that he ceases to be a free man.

(4.) And lastly, that the punishments declared by the Act, but given or withheld at the discretion of the Court, place the accused at the mercy of the Court, or, in other words, of his military superiors.

26. These objections, it will be seen, have been frequently urged, whenever a proposal has been made by the Ministers of the Crown to extend the provisions of the Act to any class of servants, civil or military, hitherto exempt. And whatever these objections may be worth, applied to the Combatant portion of the Army, there can be no doubt that they increase in weight and cogency when, as the fact is, all the Administrative officers—as Commissariat or Store Officers, previously advisedly attached to the Army as *civil* servants, having the charge of the public treasure, under one or other of the civil departments of the Crown—have had their *status* altered, that in regard to the same duties they may be bound to obey—in place of the civil minister—the General or Commander-in-Chief, and be liable to punishment for any neglect of duty imputed to them by their new masters under the Mutiny Act.

These objections have increased weight, when Civil Administrative officers, having the charge of the public treasure, are made liable to the Mutiny Act.

27. It was an open question during the reigns of William

[1] Lord Hardwicke, 11 Parl. Hist, p. 923.

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and his successor, whether the Mutiny Act should or should not be retained: and during certain periods, in each of those reigns, no such Act was in force; though troops, to a considerable number, were in the pay of the Crown.[1] Early in the reign of George I., the Act was strongly opposed; but Sir Robert Walpole ultimately supported its renewal—explaining to the House, that as the maintenance of a standing Army had been sanctioned by their votes, and though he preferred to arm the *civil* magistrate with sufficient power to punish the crimes of a soldier, yet, if that view were not adopted, it was better for the interests of the people that the Army should be kept under strict discipline by a Mutiny Act, than be left to the prerogative powers of the Crown.[2]

An open question in the reigns of William III. and Anne, whether the Mutiny Act should be continued.

28. Deeming the Mutiny Act a necessity, the attention of Parliament has been given to the amelioration of the Military Code as framed by the Crown, (1) by striving to mitigate punishments, (2) to define offences, and (3) to improve the administration of the law by Military tribunals. Of the action of Parliament in these particulars some few illustrations will be given:—

The action of Parliament in regard to the Mutiny Act.

I. As to the Mitigation of Punishment.

29. The Mutiny Act of 1713,—the first passed in time of peace—contained no provision empowering a court-martial to award a capital sentence for *any* offence whatever, but only corporal punishment not extending to life or limb for certain specified offences, including offences formerly capital, and for "immoralities, misbehaviour, or neglect of duty." The continuance of the law in this condition until the Rebellion of 1715, was assigned by some politicians as the cause of it.[3]

A.D. 1713.

Lessening the amount of punishment.

30. The Mutiny Act (1 Geo. I.), from 24th of March, 1715 to 25th March, 1717), authorised a Court-Martial to award capital punishment, or such other punishment as the Court should see fit, for a larger catalogue of speci-

A.D. 1715.

Capital and corporal punishment.

[1] See Note I., in Appendix. [2] 7 Parl. Hist., p. 538.
[3] See Debate on the Mutiny Bill for 1749, 14 Parl. Hist., pp. 426 to 482.

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fied offences than in the previous Acts, but the punishments for immoralities, misbehaviour, or neglect of duty, were omitted. In the following year, the number of capital offences was diminished, and the power to award corporal punishment for immoralities, &c., restored.

31. By the Act of 4 Geo. I., power was first given in *time of peace* to award the punishment of death by a Court-Martial for certain offences therein specified;[1] but the Lords' Journals[2] contain this protest:—"Because the exercise of martial law in time of peace, with such power as is given by this Bill to inflict punishments extending to life and limb, was not in the first year of this reign, nor hath in any former reign been allowed within this kingdom by consent of Parliament, but hath, upon many attempts made to introduce such a power, been opposed and condemned by Parliament, as repugnant to Magna Charta, and inconsistent with the fundamental rights and liberties of a free people."

Power to inflict punishment by Articles of War illegal.

32. The power to inflict the sentence of death for the crime of desertion is one that has been frequently exercised even in times comparatively recent. Few would be found now to contend, that, in time of peace, a breach of contract for service with the Crown should be so punished. The power to inflict such a punishment is still given by the Mutiny Act, and may possibly deter some recruits from entering upon a service which *may* be enforced under such a penalty.

Death for desertion.

33. On some occasions, in an early period of the history of the Mutiny Act, the sentence of death for this and other crimes was commuted for corporal[3] punishment by the Crown acting—not altogether from caprice, but at any rate upon no very definite grounds. There was no legislative authority for thus changing the sentence of a military tribunal; and the Crown was anxious to ask from Parliament the power of substituting corporal for capital punishment, but the King, was counselled—in terms which are

1728.

Proposal to confer power on the Crown to substitute

[1] In these respects, the law remained unchanged until, in the year 1851, the word "immoralities" was struck out, and the words "disgraceful conduct, as hereinafter mentioned," substituted in lieu thereof.

[2] Parl. Hist., pp. 535-547.

[3] Appendix XLIII.

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found printed in the Appendix—not to interfere with the discretion which a Court-Martial with all the evidence before it had exercised in the prisoner's case.[1]

corporal for capital punishment.

34. But the *power* of inflicting *corporal* punishment *has* been first restrained and then abolished by Parliament, notwithstanding the danger declared by the Military Authorities, of weakening the Discipline in the Army (upon which the safety of the State, or, at least, happiness of its subjects depends). Until 1810,[2] corporal was the only punishment for immoralities; but in that year Mr. Manners Sutton carried a clause, giving the Court power to award imprisonment. A maximum punishment of 300 lashes was laid down in 1812; in 1832, of 200 lashes; in 1867 it was confined to a few offences; and in the year 1868 it was abolished altogether in time of peace.[3] That the abolition will inflict loss on the strength of the Army and increase expenditure cannot be doubted. The man punished by flogging returned to the ranks and at once took his share of duty; but by imprisonment his duty is thrown on his well-conducted comrades—who are thus made to suffer for his misconduct, and the Prison Establishments are increased.[4]

Corporal punishment mitigated and abolished.

II. As to the Definition of Offences.

35. In the Mutiny Act of 1717,[5] one of the offences for which an officer or soldier was "to suffer death, or such other punishment as the court-martial should accord," was a refusal "to obey the military orders of his superior officer." No limitation or restriction whatever being placed upon the legality of those orders. A legislative enactment more dangerous to the peace of the Kingdom, or to the life of any Subject, could not be suggested. The bill was opposed, though unsuccessfully, in the Lords; but the Journals of that House contain this protest:[6]—

Definition of crimes and offences. Disobedience to any orders.

[1] See Report in Appendix XLI. (9).

[2] 53 Ann. Reg., p. 32. Compare Sec. 21 of Mutiny Act 1810, with Sec. 22 of Mutiny Act, 1811.

[3] Sec. 22 of Mutiny Act, 1868.

[4] See the Duke of Wellington's and Lord Hardinge's Evidence on Military Punishments (1836).

[5] 3 Geo. I. c. 2, sec. 1.

[6] 7 Parl. Hist., p. 430.

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36. "Because this Bill doth establish Martial Law, extending to the life of the offenders, in time of peace, which, we conceive, is contrary to the ancient laws of this kingdom; and the soldiers are obliged to obey the military orders of their superior officers, under penalty of being sentenced by a Court-martial to suffer death for their disobedience; and that without any limitation or restriction, whether such orders are agreeable to the laws of the realm, or not; when, by the fundamental laws thereof, the commands and orders of the Crown (the supreme authority) are bound and restrained within the compass of the law, and no person is obliged to obey any such order or command if it be illegal, and is punishable by law if he does, notwithstanding any such order or command, though from the King."

Lords' Protest.

37. From the year 1718 to the year 1749,[1] the enactment ran thus: "any *lawful* command of his superior officer." These words gave rise to controversy, and in 1733, were used as an argument against the increase of the standing Army.[2]

A.D. 1718.

Disobedience to a lawful order.

38. "As for the officers and soldiers of the Army," said the Duke of Argyll, "being obliged to obey the orders they receive from their superior officers, without any limitation or control, it is certain, my Lords, they are not: they are obliged to obey only legal orders. If they should receive any illegal commands, they may disobey with impunity. If I were at the head of my regiment, and should order them to shoot a gentleman innocently passing by, might not my regiment refuse to obey any such orders? Can it be said that they would be found guilty of mutiny, or be condemned to be shot by a Court-martial for such refusal?—No, my Lords, their conduct would be approved of by any Court-martial, their disobedience would be commended, and the only person to be condemned would be he who gave the illegal orders."

Opinion of the Duke of Argyle.

39. "As to our armies being obliged to obey any but *legal* orders, I know not," said Lord Bathurst,[3] "but the word ought certainly to be put into the Act, as then, in case of any disobedience to such orders, a council of war would certainly have it in their power to examine first into

A.D. 1733.

The words "legal order" suggested.

[1] 4 Geo. I. c. 4, sec. 1. [2] 8 Parl. Hist., p. 1245. [3] Ib., p. 1251.

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the legality of the orders given, as to which there may be some doubt; for it may be at least alleged that, as the bill now stands, the Council of War would be obliged to pass sentence against the soldiers for mutiny, whatever they might afterwards do with the officer who gave the illegal orders."

A.D. 1749. Altered as they stand in Mutiny Act, 1868.

40. In the year 1749 the words were altered as they stand in the Mutiny Act, 1868, and the offence is "to disobey any lawful command of his superior officer." What are the limits of military obedience will be considered hereafter. At present it is sufficient to say that the *punishment* for disobedience remains the same now as in 1717—these limits are not anywhere defined, and hence that it is left for each Court to form its own estimate of the Crime with which any Offender is arraigned.

Implicit obedience from subordinate officers, the Rule of Law.

41. One thing, however, is clear, and the language in which the rule has been laid down by the Supreme Court of the Realm, when applied to the Combatant branches of the Army, is terribly emphatic. "A subordinate officer must not"—even to save the lives of others or his own life (how much less the Public Treasure?)—"judge of the danger, *propriety, expediency, or consequence* of the order *he receives—he must obey—nothing can excuse him but a physical impossibility.*" And the same learned Judges went on to declare, "that the first, second, and third *part of a soldier* is obedience."[1] The doctrine of this Case has never been disputed in the Common Law Courts, and it is the essence of the Military System.

Application of this rule to Administrative or Financial Officers.

42. Where a certain known rule can from identity of employment be equally applied to all officers and soldiers—such being probably the case when Combatant officers of the line, and those only, sat upon and were subject to punishment for disobedience by Court-martial—no great injustice would be done to the accused; but how Ordnance officers, having Scientific duties, or Commissariat or Store officers, having Administrative and Financial duties to discharge (on behalf of the public rather than towards the army), can be fairly tried by officers utterly ignorant of

[1] Lords Mansfield and Loughborough, in Johnstone *v.* Sutton, 1 East. Rep., 548.

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their duties or responsibilities, and, may be, benefited by their obedience if the expenditure of public money on the order of the General be involved—does not appear clear.

A class tribunal necessary for Ordnance and Administrative Officers.

43. If the Guards, whose duties are identical with those of the Line, must be tried by officers of their own corps to secure them justice, it is difficult to refuse a *class* tribunal to men discharging duties essentially distinct, and widely different in responsibility to any entrusted to their Judges. The rule of obedience cannot be the same where the nature of the duty is so dissimilar.

What are offences triable by court-martial.

44. It has been a subject of controversy to distinguish the offences that are purely Military (and therefore properly within the cognizance of a Court-martial), from others that are Civil or Political (and therefore properly within the cognizance of the civil tribunals of the community). "In this country," said Lord Loughborough,[1] "*all* the delinquencies of soldiers are not triable by Court-martial, but where they are ordinary offences against the Civil peace they are triable by the Common law courts." He then points out,[2] that, though the conspirators in Holland against the life of William III., were tried by a council of officers, those in England were tried by the common law; so also that Hill, who fired the Dockyard, though a soldier, was tried by a common law court and not by a Court-martial, for that offence,[3] for "all that the Mutiny Act authorises is the trial of soldiers for such offences as they commit in their *military* capacity," as of those offences *only* are their officers recognized by the law as competent judges.

Early Mutiny Act disregarded the rule that military offences only are triable by court-martial.

45. In the Mutiny Act, passed at the commencement of George I.'s reign, this distinction was overlooked,[4] for, as already noticed, the Articles of War issued in 1717 gave the Court-martial jurisdiction over all offences committed against the person, estate, or property of *any* subject after eight days, provided, however, that no

[1] Grant *v.* Gould, 2 H. B., p. 99. [2] Vol. ii. State Tracts, p. 279.

[3] 20 H. S. Tri. 1366. Col. Despard, though bearing a military title, had retired from the Army before his trial, viz., 9th Dec., 1794. See 28 How. State Trials, 527.

[4] 1 Geo. I. c. ; 3 Geo. I. c. , secc. 42. [5] See Arts. 16 and 44.

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civil proceedings had been taken, or notice of an intention to take such had been given by the injured person within that period. The Act did not afford sufficient protection from the Regiment harbouring offenders against the ordinary criminal law, and it further declared that the trial of an offender by a Court-martial should be a bar to all proceedings in any other court.

46. The objections to these enactments may be best expressed in the words of the Lords' protest:[1]—

Lords' Protest.

(1.) "Because no provision whatsoever is made by this bill for securing the obedience of the military to the civil power, on which the preservation of our constitution depends.

(2.) "Because we conceive that a great number of armed men governed by martial law, as they have it in their power, so are naturally inclined, not only to disobey but to insult the authority of the Civil Magistrate; and we are confirmed in this opinion, as well by the experience of what hath happened here at home, as by the histories of all ages and nations, from which it appears that wheresoever an effectual provision hath not been made to secure the obedience of the soldiers to the laws of their country, the military hath constantly subverted and swallowed up the civil power.

Obedience to Civil Magistrate to be secured.

(3.) "Because a much larger jurisdiction is given to courts-martial by this bill, than to us seems necessary for maintaining discipline in the Army, such jurisdiction extending not only to mutiny, desertion, breach of duty, and disobedience of military commands, but also to all immoralities, and every instance of misbehaviour, which may be committed by any officer or soldier towards any of his fellow-subjects; by which means the law of the land, in cases proper to be judged by that alone, may, by the summary method of proceedings in courts-martial, be obstructed or superseded, and many grievous offences may remain unpunished."

Jurisdiction of Courts-Martial over Civil offences objectionable.

47. The law was subsequently altered so as to inflict the punishment of cashiering upon any officer not delivering up an offender to the Civil magistrate,[2] then by declaring that no one convicted or acquitted by the Civil

Mutiny Acts amended.

[1] 7 Parl. Hist., p. 546.

[2] 5 Geo. I. c. 5, sec. XLIV.

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magistrate should be punished by Court-martial for the same offence, save by cashiering,[1] and lastly by withdrawing from the Act[2] the clause (first inserted in 3 Geo. I.) declaring a trial by Court-martial to be a bar to proceedings before the civil magistrate. Therefore, for grave offences the Civil tribunals *alone* have jurisdiction,[3] but for minor offences both the Civil and Military Courts may each punish the offender, though the subsequent punishment by Court-martial would be limited to that of cashiering the officer.[4]

Punishment by civil and by military courts.

48. The War Office Records shew that in one instance at least (in 1745-6), a Court-martial was resorted to for cashiering an officer for feloniously stealing, and when that punishment had been inflicted, the offender was sent on to the Civil magistrate for criminal punishment. The case suggests the remark, that, should one similar to it occur at the present time, the Crown would probably rely upon the decision of the Civil tribunal, and dismiss the officer from the service without the assistance of a Court-martial.[5]

As to political offences.

49. But there is conduct, not criminal according to the ordinary Municipal or Military Code that *may* amount to an offence in a *person subject to the Mutiny Act;* and what conduct, in such a person, after an interdict from his Superior Officer, amounts to a Military crime, would come within the province of the Court-martial—before whom the prisoner was arraigned—to decide. Even in times comparatively recent, the advisers of William IV. had to assure him that a Court-martial could not properly take cognizance of Words spoken by an Officer at a Political meeting, unless they were either Treasonable or against the Members of the Royal Family;[6] and, again, that words spoken in Parliament could not be resented or punished by the Crown, unless upon the address of either House of which the officer was a member.[7]

50. No doubt the soldier has the right—in the abstract—

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[1] 5 Geo. I. sec. 44. [2] 8 Geo. I. c. 4. [3] See Appendix XLIV.

[4] Compare Mutiny Act 1 Geo. I. and 3 Geo. I. with Mutiny Act of 5 Geo. I. and 8 Geo. I. Also the latter Act with the Mutiny Act of 1868. See also Lord Raymond's Report on the Articles of War, 1721, Appendix XLI. (3).

[5] See Appendix XLV.

[6] Earl Grey's Correspondence with William IV., vol. i. p. 359. [7] Ib., p. 352.

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of expressing his opinion as others of his fellow-citizens would do, on a matter of Public or Political importance; but the nation has earnestly desired, since the time of the Commonwealth, to have a Non-political as the least evil attaching to any Army; a line must therefore be drawn beyond which such right should not be exercised, and it is a question of great delicacy to determine *where* the line *should* be drawn.[1]

What are such, after general orders, relating thereto.

51. "It would be utterly impossible," said the late Sir Robert Peel, "to maintain discipline, if soldiers were allowed to be political partizans, correspondents to newspapers, or members of political clubs. Then, indeed, a standing army would be in truth a curse, then might they bid farewell to civil liberty." He thought, therefore, "that it was fully in the power of the commanding officer to interdict a soldier's communication with the newspapers, and to prevent him from being a member of a political union. He denied the truth of the doctrine, that a soldier continued to enjoy *all* the rights of a citizen. It was clear that he must forfeit that portion of his civil right which would interfere with the discipline of the Army."[2]

Opinion of Sir Robert Peel as to interdiction from political action.

52. Acting upon the principle enunciated by this great Statesman, a General Order was put forth by the Commander-in-Chief, under date of the 3rd of August, 1835, requiring the officers and men to withdraw their attendance from Orange or other political assemblies, under the penalty of being tried and punished by court-martial for their disobedience.[3]

Order to prohibit attendance at Orange or other political societies.

53. The late Duke of Cumberland (who was on the half-pay list) expressed his determination to hold on his office of Grand Master, notwithstanding this order; but the Government of the day, supported by Parliament, were equally firm in their determination to support the Commander-in-Chief, and to arraign any officer or soldier before a Court-martial for disobedience, should any be proved to give subsequent attendance at these lodges.[4]

Disobeyed by late Duke of Cumberland, but upheld by Parliament.

[1] Lord Althorp.

[2] 14 H. D. (3), p. 46, Somerville's case.

[3] See Appendix XLVI.

[4] See Hansard's Debates, (3), vol. xxx. pp. 559, 675, 776 and 1439; vol. xxvi. p. 147, 346.



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54. The legality of an order similar to that issued by Lord Hill, cannot hereafter form a subject of doubt. To prevent regimental meetings, over which the commanding officer could exercise no control, the late Duke of Wellington introduced a Bill which the Parliament readily passed, as the 12 and 13 Vict., c. 71, for the dissolution of benefit societies.

Benefit societies in the army suppressed.

55. How far an officer or soldier may, either anonymously or openly[2] censure the acts or orders of any superior officer, without being guilty of a military offence, is a question that has been raised in Parliament. In the first case,—where the publication was anonymous, but the author was well-known,—the Commander-in-Chief refused to interfere, leaving the Superior Officer to his remedy for libel in the civil courts; in a later case it was admitted that the Crown would do well to manifest its displeasure, by leaving a junior officer *without employment*, if his time was so abused.

Censure of orders of a superior by a junior officer, how far punishable.

III.—As to Military Tribunals.

56. The objections that present themselves to the trial of any one by a Court-Martial for an offence affecting his life, or liberty, cannot probably be better stated than in the language of those Peers who took a prominent part in the debate upon the Mutiny Bill, 1749. The Bill, as and for reasons elsewhere noticed, encountered great opposition in both Houses of Parliament, and the leading Peers of the realm (not demagogues declaiming for popularity) stated their objections in these terms:—

Objections to mode of trial by court-martial.

57. After noticing that the severity of punishment was of less importance than the mode of trial, Lord Westmoreland went on to say:[3]—"What makes the people of this country more happy and secure than they are in any other, is that valuable privilege of being

Lords' debate in 1749.

Privileges of every free man to trial by jury.

[1] 107 H. D. (3), p. 879. [2] 144 H. D. (3), p. 204; 145 H. D. (3), pp. 38, 70.
[3] 14 Parl. Hist., pp. 426, 428.

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tried by their peers, and by judges who understand the laws of their country, who are bound to be of counsel with the prisoner at the bar, and who are as independent as it is possible for men to be made, consistent with the nature of mankind, and the support of Government: but by this Bill, and indeed every former Bill of the same kind, the officers and soldiers of our army are entirely deprived of this valuable privilege.

58. "If any of them be accused of a military crime, they are to be tried by a law which admits of no jury, nor of any challenge, and by judges who understand nothing of the laws of their country, and who are so far from being of counsel, if they were capable, for the prisoner at the bar, that they are often such as have their daily bread depending upon the good will of the prosecutor.

Denial of these rights to soldiers.

59. "A certain form must, it is true, be here observed in putting any of them to death; but when an innocent man is condemned to die, the form and ceremony of a trial is, I think, an aggravation of his misfortune; for I should choose to die by the order and bowstring of a bashaw, rather than by the sentence of a Court-martial, from whom I should expect neither justice nor mercy. Therefore, my Lords, if you once strip our officers and soldiers of this, which I think the chief privilege of an Englishman, I shall give myself very little trouble about the other clauses of your Bill; for if you empower a Court-martial to inflict the punishment of death, or a punishment more dreadful than death, upon any crime whatsoever, it seems to me of no signification, how many crimes you subject to the trial of such a Court, or what punishment you empower it to inflict; because the danger does not lie in the multitude of crimes to be tried, or the severity of the punishments to be inflicted, by that Court, upon the guilty, but in the little security an innocent man has for his life, who is to be tried by such a Court upon a false accusation, spirited up, perhaps, by some one who can command the Court to condemn.

Importance of a fair trial to the accused.

60. "This, my Lords, is the danger, and whoever is made liable to this danger, I can look on in no other light than as a slave to the person who has the power of appointing, and too often, I am afraid, the power of

The result of the trial wholly under the control of the General.



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directing the Court-martial. By the very first clause of this Bill, therefore, every officer as well as soldier of our army is made an absolute slave to the General appointed by the Crown; and could we have any reason to be surprised, if those, who have been thus by law deprived of all the privileges of Englishmen, should join in any project for enslaving those who had first enslaved them? We may talk, my Lords, of our army being commanded by gentlemen of family and fortune, and that while it is so commanded our liberties can be in no danger; but as this depends entirely upon the absolute unlimited will of the Sovereign, who can dismiss and commission whatever officers he pleases, and at any time he pleases, it is such a precarious dependence as, I am sure, no wise people will ever trust to for the preservation of their liberties. We know by experience how safely, and how soon an army may be modelled for any purpose.

A Court-martial is always in favour of authority, and the lawfulness of the General's orders.

61. "If an officer cannot resign,[1] let his fortune and family be never so considerable, he must obey the orders of the Commander-in-Chief, or be shot for disobedience by the sentence of a Court-martial; for a Court-martial properly chosen will deem every order lawful that can be issued by their chief commander, and from them there is no appeal; for which reason, I think, the contest about inserting or not inserting the word 'lawful' in this part of the Bill, was a contest of very little moment. It does, indeed, give the Court-martial a pretence for not condemning a disobedient officer, but it is a pretence which no Court-martial will ever, I fear, make use of, when it is insinuated to them that the Prince or General expects they should condemn; for officers are not generally much conversant in any laws but those of war, and according to the laws of war, every command is lawful that seems to be for the good of the service."

Evils of revision, and uncertainty of the sentence.

62. The Earl of Bath, who, in holding the office of Secretary at War during the Rebellion of 1715, had some experience of these tribunals, did not treat these objections as unfounded; the very *discretion* entrusted to the Court, of imposing a lighter punishment than death—

[1] It had lately been held that an officer could not resign without the sanction of the Crown.

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but which sentence the Crown or General might refuse to confirm, and return for revision—was, in his opinion, one of the most dangerous elements in the Military Code. Desertion, in time of peace, was a fraud rather than a crime; for which reason George I. would but very seldom consent to its being punished with death; and therefore the punishment of whipping was introduced instead of it.[1]

63. "Nothing can be more terrible than that of detaching entirely the military from the civil part of our Constitution, and establishing in the former a blind obedience to the orders of their chief commander. For this purpose nothing can be more effectual than that called a revision of the sentence of a Court-martial, which is in so many respects different from that of a Judge's sending a Jury out again, that I was surprised to hear any comparison made between them. When a Judge sends a Jury out again, it is done immediately, whilst the looks and behaviour of the witnesses examined upon the trial are fresh in every one of their memories, and before any one can have an opportunity to converse with or influence any of them. Whereas a Commander-in-Chief, by this power of revision, may order them to revise their sentence three months after its having been passed, when the behaviour of the witnesses must be entirely forgot by most of them, and when they have been properly spoke to, and persuaded to alter their sentence. Besides these, there is another material difference, which is, that a Judge who sends a Jury out again, and thereby shows himself displeased with their verdict, has no power or compulsive influence over any one man of the Jury; but a Commander-in-Chief, who orders a Court-martial to revise their sentence, and thereby shows himself displeased with it, has an almost irresistible influence over every member of the Court-martial, so that the order for a revision is, and often proves to be, an order for altering the sentence and making it more severe. I say, my Lords, more severe; for this must in general always be the design of a revision, because when the first

Danger of separating the Military from the Civil power.

Revision of a Court-martial sentence dangerous.

[1] 14 Parl. Hist., p. 432.

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sentence is too severe, there is no necessity for a revision, as the Commander-in-Chief may remit the whole, or any part of the punishment he pleases. When we consider this, we may easily see the danger every gentleman of the Army must be exposed to, if he ventures to disobey, or refuses to execute the orders of the chief commander of the army, let those orders be ever so illegal. We know the danger which the people were exposed to before the Revolution, by the Judges having their commissions during pleasure, though the Crown never had assumed a power to make them revise any sentence or judgment they had given; and from thence we may judge of the danger every officer must be exposed to who disobliges his chief commander, and afterwards comes to be tried for his life by judges, whose commissions, and perhaps their daily bread, depends upon the pleasure of that Commander; and this danger is greatly increased by the power that Commander has to appoint such officers as he thinks will be most pliable to his will, to sit upon any Court-martial."[1]

Destroys the independence of the Court.

64. These criticisms are deserving of notice, because the principal features of these tribunals remain as when these speeches were delivered, and the mode of administering Military Law usually becomes a subject of parliamentary conflict, when any real or imaginary miscarriage of justice is brought to notice.

Main features of these tribunals remain.

65. These Courts must be considered, when confined to their legitimate object, as tribunals to aid the Crown in the *government* of the Army, but they ought not to be permitted in any manner to interfere with its *administration*. So long as their jurisdiction was limited to combatant officers and soldiers to be tried by a Court of discipline and honour, the members of which were guided in their decisions as the oath directs, "according to the custom of war in like cases," there was less chance of a miscarriage, and none that they would put the accused officer and themselves in a false position towards the

Tribunals in aid of the prerogative of the Crown in the Government, and not in the Administration of the army.

[1] 14 Parl. Hist., pp. 437-8.

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Civil Minister on the one hand, or the General in command on the other hand. However, as the jurisdiction of these Courts has, since the Crimean war, been extended to a new class of Administrative and Financial officers—hitherto Civil servants of the Crown—their method of proceeding must assume an aspect of greater Constitutional importance.

66. The suggestions that have been offered for the improvement of the administration of justice in the Army, and the points that have risen for controversy upon the military tribunals of the country, will now be briefly noticed.

Observations upon the principal points of controversy.

67. Strange as it may appear to some readers, probably the most important suggestions were those made in the debate of 1749. The first was to secure a *free* panel of Judges by taking the officers, not upon the direct nomination of the Convening authority, but from a Roster of officers upon duty in the garrison or district. It was, however, opposed by the Ministers upon the ground that, to concede this mode of appointing officers to Court-martial duty would infringe too much upon the power of the General in command, and it was therefore rejected by a majority of 223 to 130.[1]

Free panel instead of selection of officers for Court-martial duty by the convening authority.

68. With regard to the revision of a Court-martial sentence, the practice of *frequent* revision was established, when the attention of Parliament was drawn to the subject.[2] In the House of Commons a proviso to limit the power of the Crown to *one* revision was rejected at the instance of the friends of the then Duke of Cumberland;[3] but the rejection made so evil an impression upon Parliament, that the Court Party thought it necessary to bring in a proviso to restrain the revision to *once* only, and the clause has since continued in the bill.[4]

As to revision, and the limitation to one revision.

69. In matters of conduct, the Crown and its responsible Ministers must *always* decide, though an officer be acquitted

[1] 14 Parl. Hist., p. 396.
[2] Appendix XLIII.
[3] Vol. i. of the Grenville Papers, p. 427; 14 Parl. Hist., pp. 622, 974.
[4] Vol. ii. Hansard's Debates (O. S.), p. 814.

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by a Court-martial, whether he is fit to remain in the service of the Crown; and hence instances have been frequent, in which officers have been dismissed the service, though not sentenced to be cashiered by a court-martial. It is the Ministers of the Crown —not the members of Court-martial—that are responsible to Parliament for the good government of the Army; but if the *power* of the Crown were to be limited by the decisions of these tribunals, the commission of an officer and his obedience would be placed beyond the *control* of the Crown.[1]

Crown not bound by decision of a court-martial as to the expediency of continuing any officer in Commission.

70. In the year 1748 an additional oath was imposed on the Members of the Court-martial, that gave rise to much subsequent controversy. By it each member was sworn to secresy, to the effect that he would not divulge the sentence till approved, and that "he would not upon any account, at any time whatever, disclose the vote of any member unless thereto required by Parliament." This oath, was brought under the notice of the Commons in the year 1750, and the reasons assigned by the Secretary at War for it appear to have been these:—(1.) That though it would be *impossible* to have the Members of the Court-martial independent of the Commander-in-chief, yet as the best method of preventing his influence being used, this oath was adopted, and (2.) That from the personal intimacy between the accused and the Members great bitterness of feeling might arise if such a disclosure were made as would make the votes of the judges notorious.[2] These reasons were then accepted, and ever since have been considered sufficient, for the oath stands in the Mutiny Act, 1868, with the qualification, that disclosure may be made if the Member be required to give evidence thereof by a Court of Justice, *or a Court-martial* in due course of law.[3]

Oath of Secresy.

71. But a Court-martial—notwithstanding the terms of this

[1] 31 H. D. (3), p. 350, and Chapter on the Grant and Purchase of Commissions, *post*.

[2] Compare 22 Geo. II., c. 5, sec. 5 and 23 Geo. II., c. 4, sec. 5.

[3] 14 Parl. Hist., p. 630. [4] See ib., p. 398; 16 ib., p. 1334.

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oath, which might lead to a contrary supposition—is a Court (of Justice) competent[1] to try the guilt or innocence of persons liable to the Mutiny Act. The proceedings are open,[2] and the witnesses liable to punishment for perjuries[3] committed in the course of the trial. Neither counsel nor solicitor is permitted to conduct the case of the prisoner, according to the established practice, principally on the ground that the Court has no power to award the payment of legal expenses.[4]

Court-martial is one of competent jurisdiction.

72. The proceedings are initiated by the Arrest of the offender, and placing him in Military custody. Whether the arrest shall be "open" or "close" arrest is entirely at the discretion of the Military Officer responsible for the ultimate proceedings. "I am of opinion in point of law,"[5] said the late Chief Justice Lord Tenterden, "that it is in the discretion of the superior officer to say whether the arrest shall be open or at large." Even confinement *in irons* has been justified alike by the Common Law[6] Courts, and by the highest military[7] authority. One reason—if others were wanting—for granting such powers only to men of high character and honour, for watching with vigilance even *their* proceedings through the agency of a Responsible Minister.[8]

"Open" or "Close" arrest of the offenders in the discretion of the commanding officer.

73. The close arrest of a prisoner is a legal custody within the cognizance of the Common Law Courts. The point has not, so far as I know, been raised before, or decided by those tribunals, but the Law Officers for the time being have supported this view when consulted by the Secretary at War.[9]

"Close" arrest a legal custody.

74. The first recorded case in the War Office Books is under date of March, 1779. There a soldier had been committed by

[1] 32 Parl. Hist., pp. 1017, 1137; H. D. (3), p. 1136. [2] 88 H. D. (3), p. 686.

[3] Rex *v.* Suddis, 1 East, p. 315; Hannaford *v.* Hunn, 2 Car. and Pay., p. 155. Queen *v.* Heane, 4 B. and S., 947; and see Appendix XLVII.

[4] Report on Courts-martial, 1869.

[5] Hannaford *v.* Hunn, 2 Car. and Pay., p. 156.

[6] Broughton *v.* Jackson, 18 Q. B. Rep., p. 386-8.

[7] Duke of Wellington, 93 H. D. (3), pp. 1117, 1162.

[8] See further as to cases of military arrest and confinement, Keightly *v.* Bell, 4 Fost. and Fin., p. 799; Dawkins *v.* the King, ib. p. 806; Freer *v.* Marshall, ib. p. 488.

[9] See Appendix XLVIII.

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a Justice as a deserter, to the custody of the Keeper of the Savoy, and while in such custody the Sheriff arrested him for debt. The Secretary at War consulted the law officers whether this arrest could be lawfully made; and put also this question, viz., Whether the arrest would have been lawful before the committal of the Justice, if the soldier had been arrested by and in the custody of men of his own regiment?

Civil arrest from military custody in 1778.

"I am of opinion,"[1] wrote Sir James Wallace, "the Keeper of the Savoy is not bound to deliver, upon civil process, a person committed to his custody for the crime of desertion. The nature of the arrest, or apprehension of the offender, can make no difference to the purpose."

75. The same question was again raised in 1807, upon a statement "that to withdraw themselves from military punishments, offenders procured themselves to be arrested under civil process in feigned suits;" and the law officers[2] were asked, first,—

Question raised in 1807.

"Whether a person subject to the provisions of the Mutiny Act, after arrest or in confinement for the purpose of being brought to trial by Court-martial, or pending the trial, or after close of the proceedings, and before the sentence is carried into execution, was amenable to any process, civil or criminal?" Upon which they wrote, "We do not conceive that a person legally confined for trial by a court-martial, or in execution of the sentence of such Court, can be taken out of the custody in which he is by any common civil or criminal process; and if he should, for any special purpose, be removed by *Habeas Corpus*, we think that he would be remanded charged with the original cause of his detention, unless in the case of a criminal charge of a capital nature, for which it might be thought necessary that he should be tried prior to the trial of the military offence; and then he would, if acquitted, be remanded, charged with the original cause of his detention."

76. And, secondly, "Whether the military power, after sentence executed, was bound to deliver over to the civil power such person against whom there is any

Opinion of Law Officers.

[1] Bk. 721, p. 27.

[2] Bk. 2, p. 2, 3; and see Keightley *v.* Bell, 4 Fos. and Fin., pp. 763, 804.

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civil or criminal process, of which during his confinement or arrest, as aforesaid, they had received notice?" And they wrote that "in this case the offender ought to be delivered over to the civil power."

77. The nature of the confinement must be decided upon with reference to the character of the alleged offence and the probable desire that the prisoner would feel to escape from punishment. In the case of an officer the value of his commission—which would be absolutely forfeited by breaking his arrest—is a security equivalent to bail, in ordinary criminal proceedings, for his appearance at the trial, but in cases either where bail would not be accepted, or, as upon a soldier's arrest, is not given confinement more or less severe is imposed upon the prisoner.

Reasons for "open" or "close" arrest.

78. A limit to the duration of this confinement was supposed by some persons to have been definitely imposed by the 19th Article of War, which, until the year 1866, was framed in these words,—"That no officer or soldier shall continue in arrest more than *eight* days or until such convenient time as a Court-martial can be conveniently assembled;" but the experience of many officers[1] would confirm the assertion that it is often wholly impossible to summon a court-martial within this limit, and the Courts of Law have uniformly refused to put any such interpretation upon the clause.

What is the limit to the duration of this arrest.

79. The Article was first inserted in the Military Code in the year 1742, in these words:[2]—"And to the end that officers and soldiers may not, by lying long under confinement be hindered from doing their duty, and others be obliged to do it in their room (an argument that appears to be entirely overlooked by the advocates for imprisonment in lieu of corporal punishment) we hereby direct, that upon every offence committed, and not immediately punishable by such corporal punishment as the then commanding officer shall think himself empowered to inflict, he shall forthwith acquaint his colonel, or the officer commanding the regiment, therewith; who is with all convenient speed to

Original article in 1742.

[1] See Sir Henry Hardinge, 73 H. D. (3), pp. 862, 1369. [2] Mis. Bk., p. 226.

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summon officers for composing a regimental Court-martial for the trial and punishment of such crimes or within the space of eight days at the farthest after the confinement of any such offender."

Common law courts have refused to interfere.

80. In the year 1814, the Court of King's Bench[1] expressly refused its interference to release an officer from close confinement who had been waiting his trial from the 2nd September to the succeeding 14th February, 1814; and again, where a militiaman had been in confinement from the 4th to the succeeding 11th March, 1810, the same Court[2] held that no action for damages could be sustained.

Articles altered in terms in 1866.

81. This Article, so construed by the Courts of Law and understood by the Military authorities, was, in the year 1866, altered, and now stands thus:—"That the offender shall within a reasonable time either be brought to trial before a Court-martial, or be discharged from arrest or confinement."[3] The alteration was made pending the trial of a case in the Civil Courts, and the propriety of the alteration, and of the time of making it, were both not unreasonably questioned in the next Session of Parliament.[4]

Protection from oppression that is secured to the prisoner.

82. The security which the prisoner has against oppression is to be found, first, under that clause in the Articles of War, which inflict the punishment of cashiering upon any Officer who shall unnecessarily detain any prisoner in confinement without bringing him to trial; and, secondly, in the control which by the constitution is vested in the responsible Minister of the Crown over all the proceedings of military authorities.

For trial on a false accusation the prisoner has no legal remedy against his superior officer.

83. With regard to the arrest, accusation, and trial before a Court-martial, a prisoner if acquitted, even with honour, has no remedy at Law against the Superior officer at whose instance these proceedings have been taken. It is a mere Military Offence—an abuse of a military discretionary power of which the Courts of

[1] Blake's case, 2 Man. and Sel., p. 428. [2] Bailey *v.* Warden, 4 ib., p. 400.
[3] That such is the limit imposed by the law, see Sir James Eyre's judgment, 1 Ter. Rep., p. 509. [4] 87 H. D. (3), p. 1670.

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Common Law will not take cognizance.[1] And here, again, the only security that the Constitution has provided against the abuse of military power, is an appeal to the Crown, acting under the advice of a Responsible Minister.

Condonation of Military Offences.

84. The offence for which the accused is arraigned must be uncondoned, and committed within three years of the date of the Court-Martial Warrant for his trial. The principle of condonation for criminal offences is peculiar to the Military Code, and is of comparatively modern[2] origin. Sir Walter Raleigh[3] served the Crown under a special Commission, giving him Supreme Command, with the power of life and death over others, but he was afterwards executed upon his former conviction—the doctrine then laid down being "that the King might use the service of any of his subjects in what employment he pleased, and it should not be any dispensation for former offences."[4] The rule is not so now, as applied to Military offences. "The performance of a duty of honour or of trust, after the *knowledge* of an offence committed, ought," said the late Duke of Wellington, "to convey a pardon for the offence."[5] And such is the case. "When any offence has been committed by an officer or soldier, and that offence not punished or forgiven, but advisedly overlooked, the person implicated being continued in his employment—these circumstances are held to be a good plea of condonation and a bar to further proceedings;"[6] and the Crown remitted the sentence of the Court-martial upon Captain Achison in recognition of this principle.

Statute of Limitations for Military Offences.

85. The principle of limitation was first admitted in the Mutiny Act of 1760.[7] Before that date (in 1737) there had been a provision inserted[8] which continued offences committed under an expired Act, and made them punishable under the Mutiny Act for the time being in force; but without this continuance by Statute the offenders under an expired Mutiny Act were liable, according to the view

[1] Sutton *v.* Johnstone, 1 Ter. Rep., p. 549, and see Mr. Broom's 'Constitutional Law,' p. 712.

[2] Captain Achison's case, $\frac{377}{4}$, 19 H. D. (3), p. 785. [3] 2 State Trial, pp. 1-34.

[4] Cro. Jas., p. 495. [5] Military Punishments (1836), p. 322.

[6] Mr. Villiers as Judge Advocate General, March 1855, 137 H. D. (3), p 1336.

[7] 1 George III., c. 6, s. 71. [8] 11 George II., c. 2, s. 58 (the last section).

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taken of the question in the year 1718,[1] to punishment under it. The limitation has always been three years, though in 1811[2] the shorter period of one year was suggested for regimental Courts, and an extension to five years for General Courts-martial abroad.

Method of procedure by Court-martial.

86. The forms of procedure by a Court-martial are shown in works treating of Military Law. It is a Court, as Blackstone describes it, "sui generis," and though it regulates its proceedings, not in strict accordance with the Common Law[3] or of the Civil Law, the Judges are sworn "to administer justice without partiality, favour, or affection," and if any doubt arises, then "according to conscience," and "the Custom of War in like cases."

Custom of war how far applicable to Store and Commissariat officers.

87. The "custom of war," as a rule of right or wrong—of reward or punishment—in the most favourable view of it, is *uncertain* when applied even to the Combatant branches of the Service that have existed, and been governed by "custom" for two centuries at least, but *now* that this rule is to be applied by Combatant, to Administrative—as Store or Commissariat—officers holding the public treasure, an element of uncertainty has been admitted that may give rise to a *great difficulty*. The duty of the accused Officer towards the Crown may be Financial and Economic, in fact, to save the Public Treasure from wasteful expenditure by the Combatant branches of the service. Hence the controversy may originate in departmental control, and professional feeling in the minds of his Judges be strongly aroused against the accused long before the time of his trial arrives, and the Administrative officer may be condemned by his Opponents for an honest and unflinching exercise of duty as the guardian of the public treasure.

Miscarriage of justice—appeal to the Crown.

88. In the event of any Miscarriage of Justice, the only Appeal is by way of memorial to the Crown acting through the Secretary of State. It is the usual practice to refer the matter to the Judge-Advocate

[1] Appendix XLI. (2). [2] 19 P. D. (O. S.), p. 1368.
[3] 1 King *v.* Suddis, 1 East. Rep., p. 312.

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General, and if need be to the Law Officers of the Crown for report, that no innocent man may suffer from error in the tribunal.[1]

89. It is of course open to any member of either House of Parliament to move an Address to the Crown for a copy of the proceedings of any Court-martial to be laid before it, but it may lead the House beyond the legitimate sphere of duty. Earl Russell in opposing the appointment of a select Committee of the House of Commons in Captain Robeson's case, laid down the constitutional rule in these words:—"There can be no doubt that under that kind of superintendence and supervision which this House ought to exercise, there *might* arise cases which would require such a proceeding as I have hinted at; but I can hardly believe it possible that *any* case whatever should induce this House to say, 'We think the proceedings before this Court-martial were not justifiable, that the conduct of the officers composing it were not according to military law, and therefore we will appoint a Committee of our own number to whom these proceedings shall be referred, and before whom this case shall be tried over again.'[2]" Not to Parliament.

90. "I think almost the only cases—there may be others—but I think the only cases in which this House should call for the proceedings of a Court-martial, are those of gross corruption, or of some very gross violation of the law. . . . What I wish to guard the House against is assuming an authority which is properly given to Courts-martial of this country, without extraordinary necessity, and without any sufficient reason, so that any person who may be hereafter led into improper conduct which may expose him to a Court-martial, may be told that he may have the whole question re-opened before this House, by whom there will be a different finding and a different sentence, not acknowledged by the tribunal which had formerly tried and condemned him. Sir, I think that to establish such a precedent would be to shake the discipline of the Army,[3] and not only to relax obedi- Grounds on which Parliament should ever interfere.

[1] *Exparte* Poe, 5 Adol. and Ell., p. 684.

[2] 30 H. D. (3), p. 147.

[3] The interference of Parliament in Serjeant-Major Lilley's case occasioned an expenditure of money and official labour that must be reckoned in thousands, besides inflicting a heavy blow to the discipline of the army.

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ence, but to make all officers on Courts-martial afraid to do their duty, in certain cases, under the apprehension of their being re-tried before a Committee of this House."

Lord Brougham's views.

91. And in a more recent instance (February, 1850) Lord Brougham,[1] in bringing the case of a conviction by a Naval Court-martial before Parliament, did so with an apology:—"I have always been one of those," he said, "who were of opinion that, as a general rule, no interference with the proceedings of any Naval or Military Court-martial, or with any part of the discipline of the Army and the Navy, ought to be ever dreamt of by the Legislature; but still there were some exceptions to that rule."

If a Court-martial acts without jurisdiction, all the members thereof legally liable to the accused.

92. If a Court-martial assumes a Jurisdiction which the Law does not sanction, then it is clear that all the persons, acting-either as Judges, Confirming officer, or Provost Marshal would be liable, criminally or civilly for their acts of usurpation at the suit of the Crown, or of the injured person. This and the interference of the Common law, by way of Prohibition, are the means by which persons not liable to these military tribunals may be protected from their authority.[2]

Sentence of a Court-martial works no forfeiture at common law.

93. But the sentence of a Court-martial works no attainder or forfeiture in the condemned, even to capital punishment, though its jurisdiction is substituted by Statute for that of a court of ordinary common law jurisdiction; and therefore the goods and chattels of convicted soldiers, other than such monies as are expressly made liable to forfeiture by the Mutiny Act, are not forfeited by sentence of Court-martial.[3]

Privilege of Parliament does not exempt from trial by Court-martial.

94. The privilege of Parliament affords no valid claim to exemption from the jurisdiction of a Court-martial. The claim appears to have been first asserted, in 1643, by Colonel Fiennes *after* his trial, and was not allowed.[4] In William III.'s reign, when the

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[1] 108 H. D. (3), p. 332.

[2] Connor *v.* Sabine, cited in 20 How. Sta. Tri., p. 232; Warden *v.* Bailey, 4 Taunt., p. 78; Parker *v.* Clive, 4 Burr. Rep., p. 2419; Virtue *v.* Clive, ib. p. 2472; Feye *v.* Ogle, 1 McArth. on C. M., p. 269.

[3] Co. Litt., 13A and 391A; Rex *v.* Marples, 1 Salk., p. 85, Bks. E. 479, and G., p. 31-9.

[4] 4 How. Sta. Tri., p. 298.

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Earl of Torrington was committed, by warrant of the Privy Council, to the Tower for trial by Court-martial, the House of Lords appears to have decided that, by the acceptance of his Commission, the Earl had waived his privilege of being tried as a Peer for any offences committed under the 13th Car. II., c. 29, and he was accordingly tried by Court-martial under that Act.[1] In 1783 Major Stanhope was placed under arrest for trial by Court-martial in regard to the Defence of the Island of Tobago, and the fact was communicated to the House by the King's command,[2] and the trial proceeded.

No officer has any right to demand a Court-martial.

95. No one is entitled to require the Crown to prosecute him in the ordinary courts of the kingdom, and it is scarcely necessary to add, though the popular notion runs the other way, that no officer has any manner of Right to call on the Crown to incur the waste of public time and money by assembling a court-martial for his arraignment before it on any charge that may free his character from doubt or suspicion. "Every one,"[3] said Mr. Villiers, "as Judge-Advocate General) might ascertain, by searching the most elementary works upon the military system of this country, that an officer has *no* right *whatever* to a Court-martial as a means of inquiry into his conduct."

Extension of the Mutiny Act opposed in Parliament.

96. It remains to shew that, while the provisions of the Mutiny Act have been gradually, and, if the term be not too strong, insidiously extended to a large class of persons not members of the Army, though formerly associated with it, the language of leading men in Parliament has been very decided, that the application of the Act should be as limited as possible.

Evil growth of the Mutiny Act from 1689 to 1749.

97. Take, as an illustration, a passage from Lord Egmont's speech in opposing its extension to the troops in the East Indies: — "I shall not trouble you with the growth of 'this noxious weed, which has almost already overshadowed our Constitution,' but shall conclude

[1] 14 Parl. Hist., p. 638; 14 Lords' Journ., pp. 521 et seqq.
[2] 39 Com. Journ., p. 479. [3] 39 H. D. (3), p. 1335.



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with observing that though our first Mutiny Acts extended *only* to the land officers and soldiers within this kingdom, yet that of the 4th and 5th of William and Mary was made to extend to Jersey and Guernsey; that of the 8th and 9th of William was made to extend to all officers and soldiers in the marine service; that of the 13th of William was made to extend to Ireland as well as England, and indeed to all the forces His Majesty should have on foot anywhere in the world; that of the 1st of Queen Anne was made to include likewise all those belonging to the trains of artillery; and that of the 10th all the invalid companies; the second Mutiny Act of the 1st of His late Majesty's reign was made to extend to Gibraltar and Minorca; and ever since the beginning of His present Majesty's reign, our Mutiny Acts have been made to extend to all His Majesty's dominions beyond the seas, besides all the places I have before particularly mentioned."

In reigns of William III. and Anne.

98. Throughout the reign of William III. the *only* persons liable to its provisions were "persons mustered *and* in pay as officers or soldiers," but as noblemen and gentlemen were serving in some instances without pay, and in others without commissions, the conjunction "*and*" was removed, and that of "*or*" inserted by the 6th Anne, c. 18.[1] This alteration was placed before Parliament to remove "a doubt," and another "doubt" had previously (in the 1 Anne, Stat. 2, c. 20, sec. 46,) been removed by making the officers and men employed in the several trains of Artillery expressly liable to the Act.[2]

Half-pay officers held liable.

99. Then arose the "doubt" whether half-pay officers were or ought to be held liable to the Act, which may be considered to have been an open and unsettled question from 1715 to 1786. When the question came first under consideration, it was held that officers on half-pay were

[1] See Sir E. Northey's Report, 1705, Appendix XLI. (1); 6 Parl. Hist., p. 111; see also Ordnance Letter Bk., A.D. 1712-3, p. 2, as to Col. Richards' pay for serving in the Artillery without a commission, being a Roman Catholic.

[2] The Artillery were not always included in the Mutiny Act, until the year 1739; but in previous years they were made liable where they were serving with the Army. Compare Mutiny Acts of 13 Geo. II., c. 10, with 12 Geo. II., c. 22.

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liable to the Act, and to the punishment of deserters if they failed—as in 1715 some did fail—to obey the commands of the Crown to return to active service.[1]

100. The case of the half-pay officers taken at Preston was submitted to the decision of the Cabinet, and the King was advised to try them under the Mutiny Act as deserters.[2] Instructions were accordingly issued by Sir W. Pulteney, as Secretary at War,[3] for convening a Court-martial, before which four out of the five officers taken prisoners were arraigned, and sentenced to be shot to death as deserters, a sentence which, in due course, was executed against them. The officer who escaped punishment was shown to have resigned his Commission before joining the Pretender, and therefore he was not brought to trial.

The half-pay officers taken at Preston tried and executed.

101. The legality of these proceedings became a subject of controversy, in 1749, when Sir W. Pulteney (speaking in the House of Lords as Earl of Bath) excused himself for having issued the orders, and expressed his opinion that, though no doubt the prisoners were guilty of *treason* and liable to the punishment of death, yet that they were not properly tried under the *Mutiny Act* for the crime of desertion.

Doubtful legality.

102. In 1747 the subject was dealt with in the Mutiny Act. The last clause in the Act recited,[4] "that it might be otherwise *doubtful* whether the reduced officers on half-pay were within the intent and meaning of the Act," and then made Reduced officers liable at all times "to all the penalties and punishments mentioned in the Act," and declared "that they should in all respects whatsoever be holden to be within the intent and meaning of every part of the Act during the continuance of the same."

A.D. 1747. Mutiny Act amended.

103. In 1749, a debate arose, and opinions were so strongly expressed that the clause was withdrawn. The effort to have it reinserted in the following year failed of success.[5]

A.D. 1749. Amendments withdrawn.

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[1] See Note on half-pay and non-effective allowances, Appendix G, p. 372-3.
[2] 14 Parl. Hist., p. 475; 1 MacArth., p. 192; 21 Tind. Eng., p. 387.
[3] See letter of Mr. Pulteney to General Carpenter, 16th Nov., 1715, Appendix XLIX.
[4] 21 Geo. II., c. 6.
[5] 1 MacArth., p. 192.



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104. In 1785 the question was revived by the arraignment before a court-martial of General Ross (an officer on half-pay), whose offence appears to have been writing and sending a letter reflecting upon one General Boyd. The Court, on its assembling, adjourned, that the opinion of the twelve judges might be taken on the question of the prisoner's liability to trial by a court-martial. Their opinion was "that neither his warrant as a general officer, nor his annuity of half-pay, rendered him 'obnoxious' to military trial." The General was thereupon discharged from the custody of the Marshal, and the Court dissolved.[1]

A.D. 1785. General Ross's case. Twelve Judges' decision that half-pay officer not liable.

105. In consequence of this decision, the Secretary at War proposed to alter the Mutiny Act, but the Cabinet declined to sanction any amendment relating to half-pay officers.

Cabinet refuse to amend the Mutiny Act, by applying it to half-pay officers.

"DOWNING STREET, *Sunday, March* 12, 1786.[2]
"(Half-past 4 P.M.)

"DEAR SIR,—Having consulted the Cabinet relative to the alterations suggested in the Mutiny Bill, I find it to be their opinion that there can be no objection to the words proposed by Sir Chas. Gould for the purpose of including Brevet Officers under the general description of Commissioned Officers, but they think it more prudent to omit other clauses respecting officers on half-pay, at least for the present.

"I am, dear Sir,

"*Sir Geo. Yonge.*" "Most sincerely yours,

"W. PITT."

106. The other amendment made was comparatively unimportant.[3] In the Act of 1785[4] the persons liable were, "any mustered or in pay as an officer," and in the Act of 1786[5] they were, "any who is or shall be commissioned or in pay as an officer." Parliament was *then* jealous of *any* encroachment upon the liberty of the subject, and these words were strongly opposed in the years 1786 and 1787, but they stand in the Mutiny Act at the present time (1868). It may there-

As to Brevet Officers.

[1] MacArth., p. 196.
[2] W. O. Coll., Treas. Letters, 1785 to 1785.
[3] 27 Ann. Reg., p. 230.
[4] 25 Geo. III., c. 6, sec. 1.
[5] 26 Geo. III., c. 10, sec. 1.

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fore be assumed that half-pay officers *as such*, and without Military employment,[1] are not liable to the Mutiny Act.

107. In the year 1754 the Act, after great opposition, was extended to the troops of the East India Company serving in India, and then to His Majesty's troops —and to local troops serving with them—in North America.

A.D. 1754. Extended to troops in India and in America.

108. The Militia force was not made liable to the Mutiny Act until the year 1756.[2] The principle of the first Mutiny Act was then broken in upon, and at the present date all the Reserve forces of the Crown are subject to the Military Code whenever they are called out for actual service.[3]

Militia made liable to the Mutiny Act.

109. In the year 1788 a large number of civil artificers serving in the Ordnance Department were enlisted as Soldiers, and the Corps of sappers and miners was formed. They were made liable to the Mutiny Act,[4] but the proposal met with a strong opposition from Mr. Sheridan and Mr. Fox, who urged Parliament to repel the innovation *in limine*, as a system that might go to the shipwright and to every other department of the Government; that a paltry saving of 2000*l.* a-year—the difference between pay and wages —was an insufficient reason for putting 600 Englishmen under Military Law.

A.D. 1788. Sappers and Miners.

110. No addition appears to have been made to the persons liable to the Act until the year 1809, when the Civil servants of the Treasury and Board of Ordnance, viz., the Commissariat and Storekeepers, public servants responsible for the charge and issue of public monies and public stores, were brought under the Act for the *limited* purpose of trial by Court-martial for offences committed by them against the ordinary criminal law of the country, and which must have gone *un*punished, when serving in the Peninsula, if jurisdiction had not been given to the Court-martial to punish them. Thus it was enacted[5]—"That every Commissioned Officer, Storekeeper, or Commissary, or Deputy

A.D. 1809. Commissariat and Store officers triable for embezzlement.

[1] Bradley *v.* Arthur, 4 Bar. and Cress., p. 308.
[2] 30 Geo. II., c. 25. [3] See Appendix, Note J.
[4] 27 Parl. Hist., pp. 163 to 167; 28 Geo. III., c. 12, sec. 75.
[5] Compare 48 Geo. III., c. 15, sec. 94, with 49 Geo. III., c. 12, sec. 101,

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or Assistant Commissary, or other person employed in the Commissariat Department, or in any manner in the care or distribution of any money, provisions, forage, or stores, belonging to His Majesty's forces, or for their use, *that shall embezzle or fraudulently misapply*, or cause to be *embezzled or fraudulently misapplied*, or shall knowingly or willingly permit or suffer any money, provisions, forage, arms, clothing, ammunition, or other military stores to be embezzled or fraudulently misapplied, or to be spoiled or damaged, may be tried *for the same* by and before a Court-martial."

Liability to Mutiny Act inconsistent with financial duties.

111. It is difficult to reconcile the alteration made in the years 1818 and 1819 with the facts laid before the Treasury in the year 1811. The Barrack department having been re-organised as a civil department, the question was raised whether the persons employed therein could be tried by a Court-martial under the clause last noticed. "The whole of the arrangements," wrote the late Mr. Harrison, "connected with the administration of the department seems to me that no control *can or ought to exist* over them, as the whole system of charge, issues, management, and account would *be destroyed* by *such interference*, which is obviously inconsistent with their duties as Local Accountants."[1] However, in the years 1818 and 1819 a further concession was made, which weakened the power of Control exercised by the Civil servants of the Crown over Military expenditure. Here, as in the earlier Acts, the amendment was made to "settle doubts that had been raised," and declared that "all officers[2] and persons commissioned or employed in the Commissariat Department or as Storekeepers, or under the Storekeeper-General, serving with any part of His Majesty's forces at home or abroad, and placed under the command of any General or other officer having Commission from His Majesty, were, to all intents and purposes, liable to the Mutiny Act and Articles of War."

A.D. 1818. Extended to them for all purposes.

112. This clause related to Civilians acting under the

[1] See Appendix L.

[2] The precise status of Commissariat and Store officers will be explained in Chapter XIX. It was half military and half civil—military under the general, and civil under the departments.

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Treasury and War Office, but in the following year the Act[1] was extended to the Civil servants of the Board of Ordnance, on the ground of *expediency*, and all Store-keepers and other Civil officers employed by, or acting under the Ordnance, at any of His Majesty's Ordnance Establishments at foreign stations, were made liable to the Act." Thus, if the Mutiny Act at present in force be examined, the fact will be patent that the prediction of Mr. Fox has come to be perfectly true. The Military element has extinguished the Civil element, and the Mutiny Act, like Aaron's rod, has swallowed up all other principles of governing men in any degree connected with the Army.[2]

A.D. 1819.

Mr. Fox's prediction verified.

113. Whether a person "on leave" continues liable to the Mutiny Act has not, that I am aware of, been ever authoritatively decided. From the correspondence of Earl Grey with King William IV.,[3] the question appears to have been discussed at the Board of Admiralty in September, 1831, and a doubt entertained whether an officer on leave of absence was liable to a court-martial for a military offence. In Lieutenant Poe's case,[4] the misconduct, of which that officer was convicted by a Court-martial, happened when he was a passenger on board the 'Cæsar' returning home on leave, and no objection on that ground was taken before the Court of King's Bench that the sentence was illegal.

Whether an officer is liable to the Mutiny Act "on leave,"

114. "Whether an officer, having been dismissed from His Majesty's service, and having no military employment, is triable by a court-martial for a military offence lately committed by him while in actual service and pay as an officer," was the question submitted to the Judges, and their answer (of the 3rd March, 1760)[5] was in these words:—"We have taken the same into consideration, and see no ground to doubt of the legality of the jurisdiction of a court-martial in the case put by the above question; but as the matter may several ways be brought, in a due course of law, judicially before some of us by any

or after dismissal.

[1] 59 Geo. III., c. 9, sec. 138. [2] See Appendix LI. [3] Vol. i., p. 357.
[4] 5 B. and Adol., p. 683, and see Mansergh's case, 1 Best and Smith, p. 400.
[5] Lord George Sackville's case, Bk. 723, p. 43.

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party affected by that method of trial, if he thinks the Court has no jurisdiction, or if the Court should refuse to proceed in case the party thinks they have jurisdiction, we shall be ready, without difficulty, to change our opinion if we see cause, upon objections that may then be laid before us, though none have occurred to us at present which we think sufficient." The officer was therefore tried, and the sentence of cashiering was found, and confirmed by the King.

115. In the year 1783 the same question was twice raised, under circumstances that appear to be thus stated in the War Office Records. In the first case the facts are stated thus:—

A.D. 1783. Guernsey Mutiny.

"A mutiny having lately arisen in the 104th Regiment at Guernsey, the ringleaders were put under confinement, and orders given by the Lieutenant-Governor of that island for their trial by a General Court-martial. His Majesty approved of proceeding against the prisoners in the manner directed by the Lieutenant-Governor, and at the same time signified his orders that the regiment should be immediately disbanded, which orders were carried into execution by settling the accounts of all the men (except those that were under confinement, and those whose evidence was necessary at the trial), and embarking them for Ireland and England, with a certain proportion of pay to carry them to their respective homes. This service was completed before the 24th of April,[1] beyond which day no subsistence has been issued for the regiment as such; but the agent has been informed that the subsistence of such officers and men as are attending the trial, and of the prisoners until the matter be finally disposed of, will be allowed."

116. After the trial, but before confirmation of the sentence,[2] the Law Officers were asked, "Whether, under the circumstances of this case, there is any objection in point of law to the proceedings had against these men, and to the carrying into execution the sentences which may have been passed upon them by the Court-martial, notwithstanding

Liability after disbandment.

[1] Bk. 722, p. 131.

[2] The Mutiny Act (22 Geo. III., c. 4), was in force in England from 31st March, 1783, and in the Channel Islands till 1st May, 1783.

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the regiment they belonged to has been disbanded, with the exceptions before recited?" And their reply was in these terms:—"We do not conceive that there is any objection, in point of law, to the proceedings, or to the carrying the sentences into execution, on account of the regiment being disbanded in the manner stated."

117. In the second case (which appears to have been submitted to the Law Officers on the same day as the first case) the facts are thus stated:— The Second Mutiny.

"In a mutiny which arose in one of the young regiments, several men, with arms in their hands, insisted upon the commanding officer's immediately giving them their discharges, which the commanding officer found himself under the necessity of complying with. The regiment has since been disbanded by His Majesty's orders, but some of the mutineers were apprehended before the regiment was disbanded, and some have been taken since."

118. The Law Officers were then asked, "Is there any legal objection to the men, under either of these descriptions, being now tried by a general Court-martial, or to the carrying into execution any sentences as may be passed upon them by the Court, supposing it to be satisfactorily proved that the discharges they are in possession of were extorted by violence?" And their reply was in these decided terms:—"We conceive that there is not any legal objection to the trial of the persons falling under either of the above descriptions by a general Court-martial, or to the carrying into execution such sentences as may be passed upon them, the offences having been committed whilst they were soldiers and in actual service; and we apprehend they may be tried and punished for the same, even after they cease to be soldiers, and are discharged from the service." As to discharge extorted by violence.

119. It may be doubtful *how far* these opinions would be upheld in the present day. The acceptance of a Resignation from an Officer, and the granting a discharge to a Soldier, would, it is presumed, act as a waiver or remission of all offences within the cognizance of the Crown at that time; The law of these cases doubted.

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and certainly Lord Mansfield, in Parker *v.* Clive,[1] inclined to the opinion that the acceptance of an officer's resignation discharged him from Military punishment for past offences.

As to the Militia practice.

120. The principle of continuous liability does not prevail in the Militia service, and an argument might be raised against it from the Statute Law.

Colonels of Militia not liable to Court-martial after disembodiment.

121. In the year 1763, a Warrant was signed by the King for trying a Militia Colonel, but after the Warrant was signed, though before the Court assembled, the Militia was disembodied. The opinion of the law officers was asked,[2] "whether, under the Mutiny and Militia Acts, the Court-martial could be held," and their report was in the negative; "they thought that as soon as the Militia was disembodied and returned home, a Court-martial could not be held to try the Officer upon the complaint exhibited against him."

As to Militia Statutes.

122. Probably this case led to the passing of the 55 Geo. III., c. 168, as these words stand in the preamble:—"Whereas doubts have arisen whether officers, non-commissioned officers, or private men in the militia, can be tried or punished after the expiration of periods of training and exercising, or after the militia shall be disembodied, for any offence committed against any Act in force for the punishment of mutiny and desertion, or the Articles of War made in pursuance thereof, during the period of such regiment being assembled for training and exercise, or of such regiment being embodied, and it is expedient that such doubts should be removed." The Act then sanctions the trial and the punishment of such offenders, provided "the charges against such officer, non-commissioned officer, or drummer, or private man, shall have been made out and delivered within six months after the regiment, battalion, or corps shall have been dismissed after training and exercising, or disembodied."

A.D. 1847. Limited Enlistment Act.

123. The Act of 10 and 11 Vic., c. 37, appears to have been framed upon the assumption that all liability to Military punishment ceases upon the expiration of the limited engagement. Thus, the 7th section enacts, that if

[1] 1 Bur., p. 2419.

[2] Bk. 721, p. 185.

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the term of engagement or re-engagement shall expire after any offence committed by the soldiers, and before trial or punishment, the offender shall, notwithstanding the expiration of his term of service, be deemed and taken *to be still in Her Majesty's service, for the purpose of undergoing his trial and punishment,* but for no other purpose.[1]

As to the countries to which the Mutiny Act extends.

124. The countries to which the Mutiny Act extends are enumerated in the Statute. Prior to the union with England, the troops upon the Irish Establishment were governed, first by Articles of War, made by the Crown, under the provisions of two permanent Statutes (6 Anne, c. 14, and 19 and 20 Geo. III., c. 16) and after the 21 and 22 George III., c. 43, by annual Mutiny Acts passed by the Irish Parliament.[2]

Ireland.

Army in the East Indies.

125. The troops in India, other than native troops, are governed, since the 26 and 27 Vic., c. 48 was passed, by the annual Mutiny Act. The Native troops in India are governed by Articles of War made by the Governor-General, under the authority of the 53 Geo. III., c. 155, secs. 96, 97, and the 3 and 4 Wm. IV., c. 85, sec. 73, and they are specially exempted from the Mutiny Act governing the European Troops.

Jurisdiction of Court-martial, how far local.

126. Whether the jurisdiction of the Court-martial is or is not purely Local, would appear to depend on the nature of the crime for which the offender is arraigned. If the offence is an ordinary criminal offence, for the trial of which a special jurisdiction has been conferred upon the Court, then it would appear that the trial can only be had in the Place or Country where the offence was committed;[3] but if the offence is against the Military Code, then, though committed in one Country or Colony, it may be tried and punished in another.[4]

[1] 56 Geo. III., c. 64; see 17 and 18 Vic., c. 105, sec. 45, and also Benet's 'Military Law,' p. 38. New York, 1866.

[2] See 21 Parl. Hist., p. 1303.

[3] See Appendix LII.; Sir J. Willes' Reports, 1733, and other Reports in Appendices LIII., LIV., and LV.

[4] See Sir Charles Gould's Report, and the Attorney-General's Report, 1753, Appendix LVI.

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Jurisdiction for trial of alien spies.

127. Lord Hale[1] lays it down that if an Alien Enemy comes into the kingdom hostilely to invade it, and be taken, he shall be dealt with and tried as an enemy by Martial Law, and not as a traitor, by the Common Law Courts. This rule appears to have been acted upon by William III.; for the Court-martial Books contain an entry, under date 18th April, 1695, of a Warrant for the formation of a Court-martial for the trial "of Tobias le Roy, *alias* Bourke, lately come out of France, with a commission from the French King, whose subject he owns himself to be, so that he might be justly deemed to be a spy, and to have treacherous designs against our Person and Government." The Court was authorised to give sentence and final judgment by the condemnation and punishment of the prisoner by death, corporal punishment, or otherwise, "as by the rules and methods of War and the Military Laws of Nations on that behalf ought to be inflicted."[2]

No jurisdiction over foreign troops on English pay.

128. It may be well to mention, though the same circumstances may never happen again, that when the Hanoverian troops, subjects of George II., came to this country under his orders, the Secretary at War was advised that the King had no power over them under the Mutiny Act or Acts of War. In the case of desertion, the King might, as the Commander-in-chief of those troops, order the deserter to be sent to his corps either here or abroad, but that he could do no more.[3]

As to Courts of Inquiry.

129. As connected with the administration of Military Law —though not deriving any express sanction from the Mutiny Act—are Courts of Inquiry held for the purpose of investigation into subjects of the most varied character under the authority of the General officer. Originally the distinction was not accurately drawn between the jurisdiction of a Court-martial and one of Inquiry, and all matters alike were sent to a Court-martial, either to try a prisoner or to report to the Crown on matters of fact. The Mutiny Act and Articles of War, however, give no sanction to the administration of an oath, nor to the holding of any judicial inquiry by a Court of Inquiry.[4]

[1] Pleas of the Crown, vol. i., p. 59; see also Tytler, p. 121.
[2] P. 131, and see another case, p. 170. [3] Book 721, p. 116. [4] Appendix LVII.

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130. All persons amenable to the Mutiny Act may be brought before the Court by order of a Superior officer. Their statements before it, in the nature of evidence against plaintiffs or prosecutors in the *military* profession, ought to be protected by the privilege of a witness; for whenever such statements have been made public, or brought to the notice of the person whose conduct has occasioned the inquiry, the result has usually been litigation. Public policy, therefore, requires that the Records of these Courts should be treated by the Crown as Confidential documents.[1]

Only Military or Departmental witnesses can be compelled to attend.

Public policy requires that the proceedings should be confidential.

131. This view was strongly expressed by the Court of Exchequer Chamber in the leading case of Home *v.* Bentinck.[2] "If," said the Chief-Justice, "the minutes of a Court of Inquiry are to be produced, they reveal the names of every witness, and the evidence given by each; not only this, but they also reveal what has been said and done by each member of the Court: therefore, independently of the character of the Court, on the broad rule of public Policy and convenience, these matters stand protected." Again, in the recent case of Beatsen *v.* Skene,[3] the late Lord Herbert refused to produce the records of an inquiry, alleging that their production would be, in his opinion, injurious to the public service; and he was supported in his refusal by the Court of Exchequer. "It appears to us," said Chief-Baron Pollock, "that the question whether the production of the documents would be injurious to the public service must be determined, not by the Judge, but by the head of the department having the custody of the paper; and if he is in attendance, and states that, in his opinion, the production of the document would be injurious to the public service, we think the Judge ought not to compel the production."[4]

This view supported by the Courts of Law,

132. In each of these cases, the House of Commons was appealed to for a Reversal of the rule declared by

and by Parliament.

[1] As to the conduct of them, see 170 H. D. (3) 382, and 'Sir Charles Napier's Indian Command,' Mawson, Calcutta (1851), p. 59.

[2] 2 Bro. and Bing., p. 162. [3] 5 H. and N., p. 855.

[4] See Dickson *v.* Lord Wilton, 1 Fos. and Fin., p. 419. As to Courts of Inquiry, Dickson *v.* Lord Combermere, 3 ib., p. 527, 607; Dawkins, *v.* Lord Rokeby, ib., p. 806.

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the Courts at Westminster to be the Law; but the House refused to give any sanction to the production of these papers. It may therefore be considered to be the settled rule of Army administration that Reports of this nature are confidential documents, and are not to be made public[1] for the convenience or advantage of contentious persons.

Mutiny Bill a subject of party warfare.

133. It remains to add, before closing the Chapter, that the Mutiny Bill, in times of political excitement, has been used for the purposes of Party warfare. The Commons having voted the supplies, Sir Robert Walpole thought their refusal to pass the Mutiny Act, if successful, would inflict injury on both parties in the State, and therefore desisted from opposition.[2] No doubt, the Government, as responsible to the Throne and Parliament for the safety of the realm, would be greatly embarrassed by the refusal of the powers needful for the Government of the Army. The Act has therefore on some occasions been conceded for a *short* period, only that the Ministry might be *obliged, after this short interval,* to summon Parliament for the despatch of public business.[3]

No new provisions giving rise to debate should be inserted.

134. The Act is accepted on the faith of the Government, and no matter likely to give rise to controversy, or to delay the passage of the Bill through Parliament in its regular stages, should be placed in it. When the Soldier's enlistment was first altered from life to a limited period, the subject was introduced to the notice of Parliament by altering a clause in the Mutiny Act, and this mode of proceeding was strongly objected to.[4] Upon the second occasion the alteration was embodied in a separate Bill, and the propriety of that course was never disputed.[5] The Commons have claimed the Mutiny Bill as a Money Bill, and as giving to the Lords the *only* alternative of rejection or acceptance without amendment; but amendment to the Bill in the House of Lords has not been unusual.[6]

[1] 6 H. D. (O. S.), p. 778; 8 ib. (2), p. 695; 25 ib. (3), p. 890; 140 ib., p. 1480; 143 ib., pp. 640, 1013, 1260, 1498; 145 ib., p. 477.

[2] 7 Parl. Hist., p. 693.

[3] 24 Parl. Hist., pp. 303, 719, 744, and see 23 Geo. III., c. 17, 24, 52; 3 H. D. (3), p. 175.

[4] 7 H. D. (O. S.), p. 455.

[5] 91 H. D. (3), pp. 300, 650, 686, 854, 859; 92 ib., pp. 1019, 1288.

[6] See Appendix, Note O, on Military Prisons.

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# CHAPTER IX.

## THE ARMY IN RELATION TO THE REPRESENTATIVE AND JUDICIAL INSTITUTIONS OF GREAT BRITAIN.

1. AN argument that had great weight with those statesmen in William III.'s time that were opposed to a Standing army, rested upon the fact that the army intimidated the electors,[1] and influenced the deliberations of Parliament. For this reason they were averse to the perpetuation of its establishment; and indeed the enemies of William treacherously persuaded the Prince to cause the army to proclaim him King, knowing what hatred and revenge[2] would spring up against him in the minds of the people, if he derived his power or authority from the Army.

Influence of the Army on Elections prior to the Revolution.

2. The policy of William III. was modelled by counsellors who knew thoroughly the national feeling towards the Army; and therefore, instead of resting upon Military Power for support, as James II. did and other weak monarchs have done, he resolved, so far as he could do so, to give the nation a *free* Parliament elected by *free* citizens, wholly uninfluenced by the soldiery. The measures of the new convention or Parliament of William III. that have been brought under notice in the preceding chapters, are deserving of increased respect, as emanating, so far as the House of Commons is concerned, from an assembly *freely* chosen, and to which military officers had not (as to the Parliament of James II.) been ordered to attend by Royal command.

Policy of William III. to reign by the free choice of the people.

Acts of the Parliament of William III.

3. This chapter will be devoted to the consideration of the constitutional safeguards laid down—in William III.'s and in later reigns—to secure the Representative Institutions and the Tribunals of Civil Judicature from any

Object of this Chapter.

[1] Vol. ii. State Tracts, William III., p. 576.

[2] Ib., p. 220.

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leaven of influence or coercion exercised over them by the Military Forces of the Crown.

Army in relation to the House of Commons.

4. As to the presence of soldiery in and about the Houses of Parliament, or rather the House of Commons, the rule, until the Crimean war, was that no Soldier should be admitted therein, unless sent there as a Representative of the people, or called for as a witness by the House.

No leave of absence needed to attend Parliament.

5. As a member, the officer or soldier needs no leave or license from the Crown to quit his regiment for attendance upon Parliament.

"The King," writes Lord Coke,[1] "cannot grant a Charter of Exemption (which a commission or enlistment would otherwise become) to any man to be freed from election of knight, citizen, or burgess of the Parliament (as he may do of some inferior office or place), because the elections of them ought to be free, and his attendance is for the service of the whole realm." Again: "To sit in Parliament is a service in the Member for the benefit of the King and kingdom, and not for the particular profit of the member," was laid down as the law by Lord Justice North in Barnardiston and Somes' case;[2] and, lastly, in Morris *v.* Burdett,[3] Lord Ellenborough said, "Every man who is returned to Parliament is bound by the law of the land to serve; and it has been argued, and seemingly upon probable grounds, that he may be compelled to serve."

Independence heretofore shown by members of Parliament who were in the Army.

6. The Army being hitherto officered by men of estate and position in the realm, no class has ever done more faithful service to their fellow-citizens against the increase of military power in the State than the officers of the Army. At the hazard of losing, as many did lose, their military command, for the open expression of their political sentiments, they resisted the influence of the Crown when, as in the reign of George III., it was at its height. There was no *class* feeling against the Civil Departments that by the Constitution are charged with the Administration and the disposal of

[1] 4 Inst., p. 49.
[2] 6 How. State Trials, p. 1102.
[3] 2 Man. and Sel., p. 218.

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the public money voted for the support of the Army, probably most of the members paid, as members of the State, for taxes more than they received as soldiers for pay.

7. The acceptance of a first commission on appointment[1] vacates the member's seat under the 6th Anne, cap. 7;[2] but his acceptance of a new or other commission given on promotion is protected by the 28th Section of the Act.

Acceptance of first commission does: but of second, does not: vacate seat in Parliament.

8. Civilians holding certain employments are ineligible under the 15th George II., c. 22, for a seat in Parliament; but if the Commander-in-Chief, with the assent of the Secretary of State, *orders* a military officer to hold the same office, no such disqualification under the Act results to the holder.[3] The order of the Commander-in-Chief would therefore appear to remove a statutory disqualification, and enable a placeman, if a Military Officer, to sit in the House of Commons.

Commander-in-Chief can order an officer to hold a civil appointment—and his seat is not vacated.

9. The independence of members holding military command was put to a severe test even in so late a reign[4] as that of George III. At one period they were all bound, in his opinion, to support the King's Government; and if they failed to do so, justly merited his displeasure. Ultimately the rule prevailed that those who solicited *Military* Governments upon the ground of *political* service should be called upon to resign their military employment when they abandoned their political friends.[5]

Independence of military men in Parliament.

10. In the reign of William IV. the conduct of an officer in Parliament appears to have attracted his attention, so that he deemed it necessary to ask the advice of the Cabinet as to the course to be pursued towards him. "I crave permission," wrote Earl Grey to William IV., "to state my concurrence in the opinion adopted by the Cabinet (at which I was not present), that it would not be *expedient* on such an occasion for the *King* to resort to the exercise of his Royal Prerogative by depriving [A. B.] of his Commission. What was said in the House of Commons, unless taken up

No officer to be punished for speech in Parliament—except on Address.

[1] 2 Hats. Prec., p. 52.
[2] Sec. 26.
[3] Harwich election, 1866, p. 233.
[4] 12 Parl. Hist., p. 560.
[5] King George III. to Lord North, 5 Mar., 1779, and 27 Parl. Hist., p. 1310.



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by the House and made the subject of an Address to the Crown, *clearly* could not be acted upon as the ground of such a measure."[1]

Military power in the House not inconsiderable.

11. The number of those sitting in the House of Commons connected with the Military Forces of the Crown, now that they have so largely increased, forms a formidable phalanx against an inexperienced Minister charged with the Army Administration. Upon any professional or departmental question, one man against a host must appear to a disadvantage, as diminished expenditure does not always appear to be the aim or result of their policy. Such a Party in the House of Commons cannot be overlooked by *any* Ministry, nor is it likely to be by one wanting in the support of political followers.[2]

A.D. 1774. Votes of soldiers influenced by George III.

12. Even over the private soldiers George III. was not unwilling to use his political influence. Writing to Lord North,[3] he says, "I have apprised Lord Delawarr to have the Horse and Grenadier Guards privately spoke to for their votes. They have a large number of votes." And again,[4] "I can scarcely credit the report of Lord Harrington having solicited his troops in favour of Lord Mahon." However, though the army was one of fellow-citizens,—and no suggestion has ever been made for their disfranchisement,—yet no constitutional rule has ever been more rigidly adhered to than that of excluding soldiers, *as such*, from any place in Great Britain in which a Parliamentary election is in progress.

13. The exclusion of soldiers (not being members) from the House probably originated in the prohibition issued by Parliament against the entrance of the Guards sent by Charles I.[5]

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[1] September, 1831, vol. i., p. 352.

[2] In the Reformed Parliament of 1868, 34 members are or formerly were in the Army, and 18 in the Militia or Reserve forces. See 'Times' of 4th, 5th, and 8th of December, 1868.

[3] Oct. 10, 1774.

[4] Oct. 12, 1774.

[5] See these entries in vol. ii. of the Commons' Journals:—As to pay and appointment of the Train Bands, as *their* own Guard, pp. 302, 309, 310, 326, 371, 792. As to the dismissal of the Guard sent to them by the King, pp. 340, 359, 364, 365, 368, 370, 371, 383, 400, 407, 412, 427, 468, 573, 617, 790. As to their application for the Train Bands to protect them from Fairfax's army, 3 Parl. Hist., p. 514, and 5 Com. Journ., pp. 202, 203, 205, 209, and 212.

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for their protection or surveillance. Charles I. came to the House with Guards, and the Commons protested against it as their Journals show. When Charles II., in February, 1669, was accompanied by his Guards, the incident called forth the remark from Ralph that "it was the first instance we meet with in history of a Sovereign entering upon the exercise of Legislative Power under the awe and influence of the sword." But whatever might have been the reason of their exclusion, it is clear beyond controversy that they *were* excluded, and that the rule was not relaxed until August, 1855,[1] when they were permitted for the future to enter the House unarmed.

Soldiers excluded from election towns during the time of election.

14. As to the presence of soldiers at the election of members for the House of Commons, the rule still is that of exclusion from the places of election—save as to those having votes and who come to exercise their elective franchise. The right to vote and to proceed to the place of election without leave from the Crown or the commanding officer is secured to the soldier by statute; and when summoned to Parliament by order of either House[2] the soldier must, as some contend, obey the summons without leave or order, for in neither case could the soldier be punished by a Court-martial for desertion or for absence without leave, caused by the discharge of these duties.

No leave of absence for attendance to vote, or on Parliamentary summons.

Origin of the rule excluding soldiers from places of election.

15. This rule originated in the Interregnum; and one of the earliest orders issued by William, Prince of Orange, was that addressed to the commanding officers of the several regiments of the army, on the 5th January, 1688, in these terms:—

"For the better preventing disorders that may happen in any borough, corporation, or other place of election of members for the intended Convention, by any soldiers quartered in those places; and that such elections may be carried on with the *greater freedom, and without any colour of force or restraint;* We do hereby strictly charge and require all Colonels and

[1] See 139 H. D. (3), p. 1750.

[2] Hinton's case, 74 Com. Journ., p. 1157, and H. D. (O. S.), p. 1265.



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Officers in Chief with any regiment, troop, or company, to cause such regiments, troops, or companies, to march out of the quarters where such election shall be made (the several garrisons only excepted) the day before the same be made, to the next adjoining town or towns, being not appointed for any election, and not to return to their first quarters until the said respective elections be made and fully completed; wherein they are not to fail, as they will answer the consequences at their peril."[1]

16. Later orders[2] were issued by William III. and his successors, but until the year 1735 the kingdom had no other security for the periodical issue of these orders, upon the recurrence of elections, than that the Command and Administration of the army were in the hands of a Civil Minister of the Crown responsible to Parliament. In that year the Lords (who had always guarded with watchfulness the liberties of the people from all possible encroachments by the standing army) took up the question,[3] the Bill—subsequently passed by Parliament as the 8 George II., c. 30—was drawn by the Judges and submitted to the House.

A.D. 1735. Rule confirmed by 8 Geo. II., c. 30.

17. The *reason* for passing such a measure was thus explained by one of the speakers:[4]—"It has always been supposed that troops remaining in any town during an election might be some sort of an encroachment upon the freedom of it. Therefore, ever since we had any such thing as a standing army, the Ministers have thought themselves, in common prudence, obliged to order the troops to remove. This has hitherto been left to the prudence and discretion of the Ministers for the time being, and the reason for doing so was that we have never yet been certain that a standing army would be kept up for any succeeding year; but now that we have continued a numerous standing army for so many years, and are like to continue it for many years to come, it was thought proper not to leave that to the prudence of Ministers which might in some future reign be made use of for the overturning our Constitution."

Reasons for the measure.

[1] Vol. i. State Tracts, p. 101.
[2] See Appendix LVIII.
[3] 9 Parl. Hist., pp. 883 to 910.
[4] Ib., p. 892.

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18. The Preamble lays down the constitutional rule on this subject in these words:—"Whereas by the ancient Common Law of this land, all elections ought to be free; and whereas by an Act passed in the third year of the reign of King Edward the First, of famous memory, it is commanded, upon great forfeiture, that no man by force of arms, nor by malice or menacing, shall disturb any to make free election; and forasmuch as the freedom of elections of Members to serve in Parliament is of the utmost consequence to the preservation of the rights and liberties of this kingdom; and whereas it hath been the usage and practice to cause any regiment, troop, or company, or any number of soldiers, which hath been quartered in any city, borough, town, or place, where any election of Members to serve in Parliament hath been appointed to be made, to remove and continue out of the same during the time of such election, except in such particular cases as are hereinafter specified: to the end, therefore, that the said usage and practice may be settled and established for the future." Constitutional rule laid down by Preamble.

19. The Act renders it imperative on the *Secretary at War*, under the penalty of dismissal from office, and an absolute disqualification from all future employment under the Crown, to remove the troops out of the election town, one day at least before the day of election, to a distance of two or more miles, until one day at the least after the election shall have closed. The Act did not extend to Westminster, for or in respect to the Guards of His Majesty, or to any place where His Majesty may happen to be at the time of the election, for or in respect of such number of troop sonly as should be attendant upon His Majesty. Provisions of the Statute.

20. Parliament has always insisted on the strict observance of this Statute by the Secretary at War, as the Minister appointed for carrying it into effect; and every *Secretary at War* has most *scrupulously* adhered to the provisions of the Act, as the War Office Records abundantly testify. Rule strictly insisted on by Parliament and observed by Secretary at War.

21. The first occasion in which this Constitutional rule was

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infringed was in the year 1741, upon the occasion of the West-
A.D. 1741. minster Election. Though the *Act* did not extend to
Action of Parliament in Westminster Election case. Westminster, yet the old *constitutional rule* was not *entirely* abrogated, and the House of Commons held *that* to have been violated by the presence of Soldiers at the Election. From the entries in the Journals,[1] it would appear that a riot being apprehended—if not existing—three magistrates responsible for the maintenance of the peace sent for the assistance of the military, and while the soldiers were in charge of the churchyard near to the Polling Booths, the High Bailiff made up the books and declared the election. The Commons had all the persons implicated in the transaction before them, and then resolved:[2]—"That the presence of a regular body of armed soldiers at an election of Members to serve in Parliament, is a high infringement of the liberties of the subject, a manifest violation of the freedom of elections, and an open defiance of the laws and constitution of this kingdom."[3]

22. That such an offence might not escape punishment, the
Punishment of Magistrates and High Bailiff. three magistrates and the High Bailiff were ordered to the bar of the House[4] for reprimand on their knees. The terms in which that reprimand was couched by the Speaker may be taken as conveying the sentiments at that time entertained by the House of Commons as to the presence of soldiers at elections.

23. Having read to the magistrates the Resolution of the
Speaker's Reprimand. House, the Speaker proceeded:—"And it is impossible, if you well consider the terms of this Resolution, but that you must have in your breasts the deepest sorrow and remorse for this rash act of yours, which if it had not been animadverted upon might have given the most dangerous wound to the constitution of this free country that perhaps it had ever felt. This country is free because this House is so, which this House can never be but from the freedom of elections to it, and amidst the too many ways for violating that, none can be more pernicious, because none more quick, decisive, and permanent,

[1] 24 Com. Journ., pp. 13, 35, 37, 54, 55; and 12 Parl. Hist., p. 324. [2] Ib., p. 37.
[3] See the case of Carlisle in 1821, vol. iv. (2nd Ser.), p. 1248, and 5 ibid., p. 4, 15 H. D. (3), p. 1167. [4] 24 Com. Journ., p. 54.

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than what you might unhappily have set a precedent for, and which might have grown to an extremity, under the specious and ready pretences of fears and necessity that supersede all law; a precedent that would have received an authority from the place it began in—the seat of the Government and Legislature of this kingdom."

The magistrates, who had previously acknowledged their offence, were then discharged upon payment of their fees, and the same course was pursued with the High Bailiff.[1]

24. In the year 1780, when prisoners of war were held in military custody at Winchester and Shrewsbury, application was made to Parliament to release the Secretary at War from his responsibility under the 8th George II., by a temporary Act, and the provisions of this statute evidence the same jealousy of the military at places of election as the principal statute.

A.D. 1780.

Special Act for Troops to remain at two Election Towns.

25. The preamble[2] states that "in the city of Winchester there is a house or palace belonging to His Majesty, which it has been found necessary to use as a prison for confining and guarding a large number of French and Spanish prisoners; and that a number of troops have, for some time past, been stationed in the said city for the purpose of guarding such prisoners: and whereas the number of such prisoners are so great that they could not be removed during any election of members to serve in Parliament for the said city, without great difficulty, expense, and hazard of escape: and whereas the removal of the said troops necessary for the *guard* of such prisoners, would be attended with *manifest danger*, not only to the inhabitants of the said city, and persons resorting thereto, but to the public in general; therefore, in order to the better guarding and safe keeping of such prisoners during the time of any such election." And the Act provides (as to Winchester) that the 8th George II. shall not "extend to the said city, for such time *only*, as it shall be found necessary to detain such prisoners of war in the said house or palace, and so far as the same relates to such

Statement of the absolute necessity for the presence of the Troops.

Restrictions imposed by the Statute.

[1] 24 Com. Journ., p. 35.

[2] 20 Geo. III., c. 50.

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troops or soldiers *only* as are necessary for the purpose of guarding any such prisoners of war, provided that the number of such troops shall not, during the times of such election, exceed the proportion of three soldiers to every twenty persons so confined; and provided that such proportion of the said troops as are not actually upon guard, shall, during such election, remain in the barracks until it is necessary to relieve the said guard, after which time the former guard shall immediately return to the said barracks, and so alternately during the continuance of such election." Equally stringent provisions are introduced as to the troops guarding the prisoners at Shrewsbury.

A.D. 1811. Observations of Lord Palmerston on the Act.

26. Before mentioning the repeal of the 8th George II., c. 30, and the enactment of other provisions in 1847, the views of the late Lord Palmerston upon that Act must be submitted to the reader's consideration. It may be observed, by way of preface, that in 1811 he had to assert the independence of his office as Secretary at War, against the Commander-in-Chief, who strove to be supreme over, and to place the Secretary at War in subordination to, any General Officer for the time being in command of the Army. It was to meet this act of aggression that these passages were penned.

Secretary at War an independent Parliamentary Minister.

"Parliament" (wrote Lord Palmerston)[1] "has at various times passed Acts, imposing distinct duties and responsibilities upon the Secretary at War, thereby incontrovertibly proving that, in their opinion, he is a civil servant of the Crown, liable to no orders but from his Sovereign; because to impose responsibility where there is not liberty of action is impossible, and it is obvious that no officer who is subordinate to and dependent upon another can by possibility be a free and independent agent.

Proved by the 8th Geo. II., c. 30?

27. "The most remarkable Act of this sort is that of the 8th George II., regulating the quartering of soldiers during elections. The object of the Legislature was to secure the freedom of election from any interference on the part of the military, and for that purpose it was necessary to

[1] Lord Palmerston's Memorandum, p. 118.

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compel some responsible and ostensible officer, who had the power to do so, to remove all troops from places where elections were to be held. Accordingly, the Secretary at War was fixed upon for that purpose, and he is bound by this Act to move troops from such places one day previous to the election, and to keep them away till one day after the election is over, under pain, should he omit or neglect to do so, of forfeiting his office, and of being incapable of ever again serving His Majesty in any capacity whatever, civil or military.

28. "If the Secretary at War were impeached at the bar of the House of Lords for having violated the provisions of this law, would he be suffered to plead that he had been prevented from moving the troops by the orders of the Commander-in-Chief, or Captain-General, or by his not being able to obtain their concurrence and consent? or would he not be told that such was precisely the case against which the Act intended to guard the liberty of the subject; that to him alone Parliament and the country looked for the execution of its law; and that even the royal authority could not release him from an obligation which it had concurred with the other two branches of the Legislature to impose?

Disobedience to that Act could not be excused by any obedience to an order from the Commander-in-Chief.

29. "The Secretary at War seems indeed to be the officer who stands peculiarly between the people and the army, to protect the former from the latter, to prevent their public revenue from being drained by any unauthorised increase of military establishments, and their persons and property from being injured by any possible misconduct of the soldiery; and upon him would Parliament and the country justly fix the responsibility for any neglect of this part of his duty."

Secretary at War to protect the public from increase of military expenditure.

30. In the year 1847, the 8th George II., c. 30, was repealed, and other provisions enacted without a single remark[1] from any member of either House being recorded, as to the provisions either of the *old* or of the *new* law, an evidence—conclusive in its nature—of the very altered feeling

A.D. 1847.

Repeal of 8 Geo. II., c. 30.

[1] 91 H.D. (3), passim.

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entertained by the Legislature towards the army after the lapse of little more than a century.

Provisions of 10 Vic., c. 21.

31. The 10 Victoria, c. 21, carries out the same arrangements for the troops at elections that, as will be shown in this chapter, Mr. Windham made for them at Assizes in 1798. Thus, by Section 2, on days appointed for nomination, election, or taking the poll, no soldier within two miles of any city or place where such shall take place shall be allowed to go out of the barracks or quarters, unless for the purpose of mounting or relieving guard, or of giving his vote at such election.

Extends to Volunteers.

32. In the year 1861 exception was taken in the House of Commons[1] to the presence of Volunteers in military array at the unopposed election of the late Lord Palmerston; and they were prohibited on all future occasions from assembling at drill or any other purpose between the issue of the writ and the termination of the election, or during the progress of any municipal election.[2]

A.D. 1747. Observance of

33. The observance of the Act by the Secretary at War was at all times most exact.[3] In 1747, when prisoners of war were detained in military custody in certain

[1] 162 H. D. (3), p. 822.

[2] Appendix LIX.

[3] See Orders, 26 July, 1830, p. 115, MS. Regulations. From the forms used at the General Election of 1830, the mode of procedure would appear to have been as under:—

1. An order was issued to the officer commanding the regiment, or any detachment or recruiting parties of His Majesty's forces at the place of election, directing him to march His Majesty's forces from thence, three days before the day appointed for the election, to some adjacent place, not within a less distance than three miles, and to remain for three days after the election should be over, and then to return. This order the officer was to acknowledge, and to report the quarters which he might occupy in compliance with the order.

2. This was sent, in borough elections, direct to the Postmaster for delivery, and he was requested to acknowledge the receipt, and he was to inform the Secretary at War of the day fixed for the election.

3. The same order in county elections was sent to the Sheriff, that he should, when the towns for polling were named, send the same order on to the Postmaster of the place appointed, for delivery to the commanding officer there.

The Sheriff was requested to acknowledge the letter, and inform the Secretary at War with the place and time fixed for the election.

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election towns, he was advised by the Law Officers that the Act left him no alternative but to remove the Guards, even if their removal necessitated that of the prisoners. the Statute by Secretary at War.

34. In 1812 troops had been removed into Clifton, immediately adjacent to Bristol, during the election in the latter place. "Nothing" (wrote the Law Officers) "but absolute necessity to prevent a dangerous infraction of the public peace and of the freedom of election by illegal force,[1] which the civil power is not of itself sufficient to redress, can justify the introduction of the military during the election. If the *necessity* be *clearly* made out, an *Act of Indemnity* would be passed to prevent any penalty or criminality in such a case." In the Appendix the Reports of the Law Officers in these cases is given, and also one with reference to the Windsor election. A.D. 1812.

35. The exclusion of the military forces from Assize towns, during the holding of the Assizes, dated from an earlier period than the Revolution; and the first Order is probably that of Charles II., given in the Appendix.[2] If the soldiers were exempt from the common law, and liable to military tribunals only, it might have been expedient to remove them from the scenes of ordinary judicial procedure; but whatever the original motive, it is certain that their presence was considered an infringement of a great constitutional rule, the breach of which called forth the remonstrance of the Judges. Soldiers excluded from towns during the Assizes.

36. The *only* security for the issuing of these orders was the Constitutional responsibility of the Minister charged with the Administration of the Army. Parliament had distinctly recognised the rule by the statute law upon one—and only one—occasion, when, in the urgent events of 1798, Militia were ordered to assemble; and this provision was inserted in the statute:[3]—"And whereas, in case any of the meetings appointed by this Act to be held should fall within the time appointed for the Assizes in any town where such Only security for this rule was the action of a responsible Minister.

[1] Appendix LX. [2] Appendix LXI. [3] 38 Geo. III., c. 18, sec. 8.

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meeting has been appointed to be held, doubts may arise whether it would not be necessary for the Militiamen so met to remove from the same: Be it therefore enacted, That it shall be lawful for them to continue and remain there, notwithstanding the Assizes being then held at such place."

A. D. 1798. Soldiers confined to barracks.

37. The importance attaching to this rule, in the opinion of the Judges, is evidenced by the correspondence that passed on the subject in the year 1798. Many barracks had been erected in Assize towns, and it appeared to the Secretary at War to be a more convenient arrangement to confine the men within the barracks for the time that the Assizes were held, than to remove and place them on billets in adjacent villages or towns. With this view, Mr. Windham communicated with the Judges, and the correspondence, which appeared to be worthy of a place in the Appendix,[1] shows the result,—viz., that the soldiers were ordered by the Secretary at War to remain in their barracks, unless the Judges on each particular Assize were pleased to revoke the order, and release the men from this confinement.

Abandoned in the year 1855.

38. An arrangement such as this might well have been left as it was made; but, during the Crimean war, Lord Campbell appealed in the House of Lords[2] to the *Commander-in-Chief* to release the soldiers from this conditional duress; and the appeal to such a quarter was not made in vain. "He," Lord Campbell, "had at different times received applications from various Commanding Officers to allow their men to appear in the streets at such times, and not only had he on all occasions cordially granted the application, but had invited their presence in the courts, and he had had the satisfaction of finding a considerable number of them among the spectators. At Shrewsbury, the Commanding Officer who made the application pointed out the great inconvenience which would arise from the confinement of the men, who were at the time billeted in the different public-houses of the city, and who would have been obliged, had the order been stringently enforced, to remain in their bedrooms during the whole of the Assizes. He did not see that any danger was to be apprehended, either to the inde-

[1] Appendix LXXII.

[2] 137 H. D. (3), p. 1553.

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pendence of the Judge, or the due administration of justice, by allowing the presence of the Militia or troops of the line, in the courts or in the streets of Assize towns during the progress of the trials."[1] That Constitutional safeguard, whatever it was worth, was thus—on these slight premises—abandoned.

39. This Chapter has been confined to the law applicable to Great Britain, for *in Ireland* an entirely opposite rule in each case prevails. Soldiers, instead of being marched *out*, are marched *into* the towns during Elections or Assizes, that both may be carried on with the Military present and acting in aid of the Civil power.

In Ireland contrary rules prevail.

[1] 138 H. D. (3), p. 1834.

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# CHAPTER X.

## AS TO THE EXEMPTION OF THE ARMY FROM THE ORDINARY RULES OF LAW.

One of the principles of first Mutiny Act, that no person should be thereby exempt from the ordinary process of the law.

1. ONE of the great principles laid down by Parliament in the first Mutiny Act was that "no officer or soldier whatsoever" should be exempted by that Act[1] from the ordinary process of the law." This declaration annihilated at once the assumption put forward in all the the Articles of War, that the soldier was only amenable to his military superiors, and owed no allegiance to, as receiving no benefits from, the civil institutions of his country.

Duty of Parliament to maintain that principle.

It thus became the duty of Parliament vigilantly to watch the action of the Ministers of the Crown (as the Sovereign was the author and source of these exemptions), that this principle might be strictly adhered to in all future Mutiny Acts annually submitted for parliamentary sanction. The occasions and manner in which this duty has been discharged will form the subject of the present Chapter.

The ordinary courts of the civil judicature are supreme.

2. The action of Parliament with regard to the jurisdiction of Courts-martial and the punishment of ordinary criminal offences has been noticed in a previous chapter, and on that subject little need be added. The Mutiny Act renders it clear that the trial and punishment of an offender by a Court-martial are no answer to an indictment in a civil court for the same offence; while, on the other hand, the trial of an offender by a civil court is conclusive of his guilt or innocence, and an answer to all further punishment, except that of dismissal from the service of the Crown.[2]

[1] See Sec. 5.

[2] See Appendices XLV. and LXIII.

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3. It may be open to remark, that this principle was slightly infringed when the "Jurisdiction in Homicide Act" was passed in 1862. Few can doubt that it was better that the ordinary civil tribunals of the country should *retain* their jurisdiction for the trial of the offenders mentioned in the Act, than that a jurisdiction should be *given* to a Court-martial to try cases of murder in England. It was, however, strenuously urged by some—that as *such* a jurisdiction had, with great advantage to the service, been given to those courts *abroad*, therefore it should be conferred upon them here; but once adopt, as a model for *England* (as some persons desire), the rule of Army Administration and Government which *necessity obliges us to tolerate abroad*, and the order of Constitutional government is inverted; the Civil are made subordinate to the Military institutions, and—as it might be more fully shown in another place—the Crown would in effect govern by a Standing Army.

Jurisdiction in Homicide Act of 1862.

4. The object of that Act was to support discipline, not speedily to avenge murder; and therefore in the first case—Major De Vere's—under the Act, where the crime arose out of the military relationship existing between the parties, the offender—by direction of the Secretary of State—was tried under the Act; but in the second case, when the crime arose out of the social relationship existing between the parties, and was in no way connected with the discipline of the Army, the offender was tried at the Assizes.

Object of the Act, and cases under it.

5. An infringement of the principle of the first Mutiny Act has been sanctioned by Parliament in the exemption of soldiers from arrest for debt under 30*l.*, and for other matters. By the ancient prerogative of the Crown, exemption by writ of protection from arrest could be granted by the Sovereign (1) to his debtor till the debt was paid,[1] and (2) to a person engaged in war[2] out of the King's dominions. The object was to secure, in the first case, the King's debt by preventing other men of their suits; the theory of the Constitution being "*Thesaurus regis est funda-*

As to exemption from civil process.

Grant of Protection,—1. To Debtors. 2. To Soldiers.

[1] Hill *v.* Bigge, 3 Moore P. C., p. 478.

[2] Thurston *v.* Mills, 16 East. Rep., p. 259; 3 Henry VIII., c. 4 (vol. iii. Stat. Realm, p. 26).

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*mentum belli et firmamentum pacis,*"[1] and in the other to secure to the Crown, as representing the public interests, the service of the person. "The service in war as the King's soldier, being for the public good of the realm, private men's actions must be suspended for a convenient time (one year and a day), for *Jura publica anteferenda privatis,*" and again, "*Jura publica ex privatis promiscuè decidi non debent.*"[2]

Disuse of these grants.

6. "Of these protections," wrote Lord Coke,[3] "I cannot say anything of mine own experience; for, albeit Queen Elizabeth maintained many wars, yet she granted few or no protections; and her reason was, that *he was no fit subject to be employed in her service* that was subject to other men's actions, lest she might be thought to delay justice." Since Lord Coke's time they have fallen wholly into disuse, and the last of them traced in the Law Reports is in 4 William and Mary, where Lord Cutts,[4] "then detained in the wars in Flanders," pleaded a protection to an action brought against him by his tailor.

Object of Parliament to secure the payment of the soldier's debt to the civil community.

7. To secure to the civil community the payment for his quarters by the soldier, was the object that Parliament had in view[5] in making it imperative by the second Mutiny Act upon every officer receiving the pay of his regiment to give notice thereof to the innkeepers to bring in their accounts, and—then by the Act of 1696-7[6]—in directing the Commanding Officer within twenty-four hours after coming into quarters, by sound of trumpet and beat of drum, in the market or other public place "to cry down credit," that a soldier might not be trusted with goods without the licence of his officer.

Parliamentary sanction to exemption from debt given in a temporary Act.

8. The Exemption from process other than for some criminal matter, was first granted to "volunteers" under the temporary Conscription Act of 4 & 5 Anne,[7] to secure his *service*, but not to protect his goods from seizure. It soon became an abuse, as set forth in the preamble to the 9 Anne:[8]—"Whereas divers abuses have

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[1] 1 Co. Litt., p. 131 *b*; 1 Stat. Realm, p. 323. [2] 1 Co. Litt., p. 130 *a*.
[3] 131 ibid. [4] Barrudale *v.* Lord Cutts, 3 Lev., p. 332; 5 Ter. Rep., p. 689.
[5] 2 Wm. and Mary, sess. 2, c. 6, sec. 22.
[6] 8 and 9 Wm. and Mary, c. 13, sec. 4. [7] C. 21. [8] C. 4. sec. 3.

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been frequently committed by several tradesmen and others in order to defraud their creditors of their just debts, under pretence of being listed or entered as volunteers in Her Majesty's service, and at the same time keep houses, follow their several trades and employments, and appear as persons of reputation, which practices tend to the great damage of honest creditors, the decrease of personal credit, and the great discouragement of trade." And to remedy "these evil practices," the Act provided[1] that in case of arrest for any debt under 20*l.*, a volunteer should be discharged; then, within two months after his discharge, he should be actually sent into Her Majesty's service *abroad beyond the seas;* and in case he should not be actually sent into, and continue in, the service abroad, then he should have no privilege, advantage, or protection as a soldier.[2]

9. The Mutiny Act first granted exemption in the 1st George I. to any volunteer, in the same words that were used in the Statute of 4 & 5 of Anne, and the third Mutiny Act of that reign gave *any* Justice power to release the soldier (without fee) on proof of his enlistment. The clause of exemption met with decided opposition in Parliament, upon grounds that are thus stated in the Lords' protest of the year 1717:[3]—"Because by this Bill the soldiers are exempted from being arrested by process of law, at the suit of any person for recovering a just debt, or upon any action whatsoever, which is a great injustice to the subjects, taking from them the benefit of the law for recovering their just demands, and for obtaining satisfaction for any injury done them by a soldier, either by wounding or maiming, or wrongfully taking away his goods; and we conceive this will be so far from preserving good order and discipline in the Army, that, on the contrary, it will be a great encouragement to the soldiers to live in their quarters in all manner of licentiousness, and to insult their fellow subjects, both in their persons and estates,

These granted by the 1st Mutiny Act of George I.'s reign.

Lords' Protest.

[1] 9 Anne, c. 4, sec. 3.

[2] After the peace of Utrecht, two privileges were granted to disbanded soldiers—(1), to set up trade in any town, notwithstanding any local law to the contrary, and (2) exemption from arrest, &c., for three years. See 12 Anne, c. 14, secs. 1 and 6; and also, as to the first of these privileges, 5 and 6 Wm. IV., c. 76, sec. 14. See also Appendix LXIII.*

[3] 7 Parl. Hist., p. 429.



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when they know that by this law they are disabled from obtaining any effectual satisfaction from them, by the course of justice, for any such violence or injury; and the only reason offered to justify this exemption from arrests being to prevent the taking soldiers out of His Majesty's service by collusive arrests, we think the preventing such an imaginary mischief can be no reason to discharge the persons of soldiers from being taken upon any civil process, where the cause of action is real, which is a privilege only belonging to a peer of the realm."

Limited to debts of 10*l.*

10. In the following year the exemption was limited to debts under 10*l.*, and the Act amended to enable honest creditors to recover their just debts, and to prevent unjust and fraudulent arrests to deprive His Majesty and the *public* of the soldier's services, by providing—in terms still in the Act[1]—for proof of the plaintiff's debt to entitle him to an arrest, and for the soldier's discharge (upon his own or his officer's application) where he has been arrested contrary to the intent of the Act.

Opposed, and Lords' Protest.

11. The opposition was renewed without success, and the Lords' protest contains the arguments that were urged for the rejection of the Bill.[2] "Because the clause in the Bill alleged to be made for enabling honest creditors to recover their just debts from soldiers seems to us rather to give a protection to the soldier than any real advantage to his creditor or other person having just cause of action against him; it protects the person of a soldier from execution as well as the mesne process, for any debt under 10*l.*, and it protects the estate and effects as well as the person of every soldier from all other suits but for debt, when the cause of action doth not amount to the like sum, and in other cases, when the cause of action exceeds that value, plaintiffs are in many instances put under such unreasonable difficulties that we conceive, before they can be allowed even to commence their suit, their bare compliance therewith may become more grievous to them than the loss of their debt, or a quiet submission to the wrong sustained, by which means His Majesty's good subjects may be highly injured in their properties and insulted in their persons

[1] 4 Geo. I. [2] 7 Parl. Hist., pp. 548 and 932.

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by the soldiery, and yet be deprived of the legal remedies appointed for the redress of such grievances.

12. The same clause has since been continued in the Mutiny Act with little alteration, except that in 1780[1] the amount was raised to 20*l.*, and in 1830 it was raised to 30*l.*,[2] at which it now stands. Exemption from arrest has been granted in other cases, and the clause as it now stands has an extended operation.

Exemption raised to 30*l.*, and otherwise extended.

13. That this privilege should be looked upon with jealousy by the civil community need not be a matter of surprise. The Judges, following the rule of the earlier cases, have placed a strict construction upon the Act, and have administered its provisions for the benefit of the *public* rather than of the soldier seeking relief from imprisonment.[3] No doubt, in cases where the crying down of credit does not take place—as in the case of the Permanent Staff of the Militia and Volunteer Forces—and a knowledge of this privilege does not reach persons trusting the soldier, great injustice is done.

Exemption should be jealously guarded against.

14. It will be noticed, upon the perusal of the Clause, that Parliament has sanctioned the extension of the exemption to other claims than ordinary debts, and by so doing has thrown burdens upon the Poor Rates that would otherwise come upon the soldier.[4] However, in no case does the Act contemplate the intervention of the Minister of the Crown; the soldier's release is to be sought for by his own agency, or through that of his Commanding Officer, from the civil tribunals of the country, and the Judges are not disposed to sanction any abuse of this privilege.

Charges thrown on the Poor Rates.

15. The other exemptions that have been sanctioned or

[1] 20 Geo. III., c. 12, sec. 66. [2] 11 Geo. IV., c. 7, sec. 3.

[3] Lloyd *v.* Wooddall, 1 Bla. Rep., p. 29; Bryan *v.* Woodward, 4 Taml. Rep., p. 599; 1 Bur., 466.

[4] King *v.* Archer, 2 Ter. Rep., p. 274; Same *v.* Bowen, 5 ib., p. 156; Ferrall's case, 2 Den. Cr. Cases, p. 54.



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granted by Parliament may be divided into three classes. The first, as to the wills and estates of deceased officers and soldiers. The second, as to the Taxes and Rates. The third, as to discharge of Municipal and other offices that pertain to a citizen.

Other exemptions, of three classes.

16. I. The exemption granted by the 29 Charles II., cap. 3, as to the Wills of Officers and Soldiers was continued by the 1 Victoria, cap. 26, Section 11; and therefore, as the law at present stands, any soldier (and in this expression officers are included), being in *actual military service*, may make a nuncupative will, as to his personal estate, to be judged of as to its validity according to the law in force prior to the passing of the 29 Charles II.

17. What is "actual military service," within the meaning of these Statutes, has been a matter of controversy before the Ecclesiastical Courts. In a recent case [1] (1843) it was contended, "that this privilege extended to soldiers of all degrees, and under any circumstances, with this exception, that there might be a distinction between soldiers on full-pay and on half-pay, but that otherwise all persons belonging to the British Army were to be considered as being on actual military service;" so that "every soldier on full-pay, from the recruit of to-day to the oldest General in the service, could dispose of his personal property by a will made by word of mouth."

Actual military service—what?

This view of the law is untenable. Those who enjoy the privilege are not such as lie safely in some castle, or place of defence, or besieged by the enemy, only in readiness to be employed in case of invasion or rebellion, but such as are on an *expedition* or in *actual service of war;* and such during the time of their expedition are privileged, whether employed by land or water.[2]

[1] 3 Cur. Rep., pp. 527, 563-7-8.

[2] Cases (1) of Probate refused: 3 Cur. Rep., p. 819; 1 Rob. Eccl. Rep., p. 76; 1 Eccle and Ady, p. 24. (2) of Probate granted: Herbert *v.* Herbert, 2 Jur. (N. S.), p. 24; E., p. 251; 11 Jur. (N. S.), p. 569.

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18. The administration of the estates of officers and soldiers dying in camp or quarters, is regulated by the ordinary law of the realm; but, for the purpose of securing the property to the rightful owners thereof, provision has been made, from the earliest times, for its collection and realisation by the Commanding Officer or brother officers of the deceased. "Wherever Martial Law prevails," said Lord Loughborough, "it claims a jurisdiction over all military persons in all cases—even their debts are subject to inquiry by a military authority." The Articles of War from the earliest date—as those of 1639, 1642, 1666, and 1672, show—have contained a provision on the subject; but it was not until the year 1813 that any direct statutory authority was given to the arrangement. In that year, the 58 George III., cap. 73, was passed, and in the year 1825 amended by the 6 George IV., cap. 57.

As to the effects of a deceased officer or soldier.

19. Both statutes, though repealed, were in substance re-enacted by the 26 & 27 Victoria, cap. 57 ("the Regimental Debts Act, 1863").

The personal effects of officers and soldiers.

The main purport of the Act is to secure the payment (1) of certain expenses that are inevitably incurred on the decease of any person, and (2) of other demands of a regimental nature. The mode of effecting this object is by the appointment of a committee of officers (called the Committee of Adjustment), with defined statutory powers (1) for the collection and conversion into money of all the deceased's effects in camp, &c.; (2) for the payment thereout of all the preferential claims; and (3) for the remittance of the surplus or balance of the estate to (say) the Secretary of State.

Committee of Adjustment.

20. The Committee have a statutory duty to discharge, for which they (not the Crown) are responsible to the creditors or next of kin of the deceased. The Committee have an absolute legal and preferential title against any other claimant to the effects in camp, &c., belonging to the deceased officer. And in a case where the sheriff entered under a *fi. fa.* issued against the estate of the deceased officer, the title of the Committee was held to prevail, and the sheriff withdrew.

Crown not responsible for the Committee's Acts.

The Committee have an absolute title to effects in camp, &c.

21. The functions of the Secretary of State, under the Act,

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Functions of the Secretary of State under the Act.

are (1) under Section 6 to decide (when appealed to) doubts or differences upon claims of Regimental creditors; and (2) to distribute the surplus or residue of money remitted to him by the Committee for distribution amongst general creditors or next of kin. With regard to this latter duty, the Secretary of State has, for any residue *under* 100*l.*, special statutory powers without administration, (1) of paying to the Creditors (section 17), (2) to the Widow or child of the deceased—the estate for distribution, or (3) of retaining the same upon investment for infants, with a power of applying the principal and income thereof for their maintenance or education.

Exemption from probate duty.

22. Whenever probate or administration is needed to the will or estate of any "common seaman, marine, or soldier," —a term that includes a non-commissioned officer— no stamp duty is payable under 55 George III., cap. 184, schedule 3: an exemption which has been enjoyed ever since the duty was first imposed by the 5 & 6 William and Mary, cap. 21, section 4.

II. As to the exemption from taxes and rates, a brief reference only need be made.

Tolls exemption under statutes.

23. The exemption from tolls is *not* one for the *personal* benefit of the officer or soldier, but for the *Crown*, as representing the public. In early Turnpike Acts, as, for instance, Local statutes passed in Charles II.'s and later reigns, the Army, upon its march, was exempted from the tolls thereby imposed. In 1778,[1] the General Turnpike Act contained the first general exemption in favour of the Army, which, in the year 1799, was inserted in the Mutiny Act. When Parliamentary powers are conceded for the purpose of local taxation, the Crown is not usually made chargeable for officers and soldiers *upon the march*.

24. The exemptions from assessed taxes *are* granted by Par-

[1] 18 Geo. III., c. 64.

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liament for the *personal* relief of the officers, and, as such, are matters to be settled between the claimants and the Inland Revenue as representing the public. The Acts granting them are 52 George III., cap. 93, schedules C and F; 5 & 6 William IV., cap 64, section 7, and cap. 65, section 5; and 16 & 17 Victoria, cap. 90. Assessed Taxes.

25. The exemption from postage is (for the same reason) granted to every soldier and non-commissioned officer, whether at home or abroad, whilst actually employed in her Majesty's service, who (under the 3 & 4 Victoria, cap. 96, section 53) is entitled to send or receive letters not exceeding half-an-ounce in weight by the post for 1*d.* prepaid; but a letter liable to, is chargeable with *foreign* postage.[1] However, any *commissioned* officer and any soldier privileged under the 3 & 4 Victoria, cap. 96, may receive letters free from the *foreign* postage[2] payable on or in respect of the *re-direction* of such letters (when re-directed and again forwarded by the post through any foreign country), and the Treasury may remit British or Colonial postage due on re-direction. Postage of letters, &c.

26. The exemption of officers and soldiers from Local rates rests mainly upon the ground of Prerogative; if the occupation is imposed on them as a matter of duty, not for the personal benefit of the particular officers or soldiers, it is held to be—*not beneficial*—but for the Crown or public, and rates are not due from them. The whole subject was brought before a Select Committee of the House of Commons (444), who reported upon 19th July, 1858; and the leading cases upon the subject are Rex *v.* Terroll, 3 East. Rep., 514; Queen *v.* Stewart, 8 Blac. and Ell., 369; Mersey Dock, Case 11, House of Lords' Cases, 443. Local Rates.

III. 27. From all offices where a deputy may not be appointed by law, but the *personal* discharge of duty is needed, officers and soldiers on full pay in the Army, must, From Offices.

[1] 10 & 11 Vic., c. 85, sec. 6.

[2] 23 & 24 Vic., c. 65. sec. 1.

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it is presumed, be held to be exempt. To discharge at the same time *all* the duties of a soldier *and* of a citizen would be impossible. The Crown and Parliament have obliged these officers and men to a *personal* discharge of duty in *the Army*, and that obligation must be held to be a charter or grant[1] of exemption from these duties of civil life. The only doubt arising against this view of the law is suggested by the special exemptions that are found (1) in the 6 George IV., cap. 50, section 2, from serving upon a jury, and (2) in the Mutiny Act, section 41, from serving the office of Mayor or Sheriff. Exemption from other various offices is, in fact, enjoyed, and the law may reasonably, I think, be presumed to be as it is here laid down.

[1] Gerard's Case, 2 W. Blac., p. 1123; King *v.* Clarke, 1 Ter. Rep., p. 687.

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# CHAPTER XI.

## ON THE MOVEMENT AND QUARTERING OF TROOPS.

1. THE Mutiny Act, within a few years after the original Act was passed, had clauses inserted therein relating to other matters than the discipline and government of the Army. The most important of these had reference to the movement and quartering of troops—in other words, the grant of extraordinary powers for the Impressment of carriages and the Billeting of men.

The operation of Mutiny Act extended by clauses relating to improvement of carriages and quartering of troops.

2. The great oppression which the exercise of these powers in earlier reigns had occasioned to the people, was a motive sufficient in itself to induce the Parliament of William III. to grant them to the Crown with extreme caution, and to intrust their execution to the Civil magistrate acting under the statute in restraint as well as in aid of the Army. The present Chapter will contain such information as may be of interest to the reader on the subjects (1) of impressment, and (2) of quartering, including in the latter term the "Barrack" as well as the "Billeting" system.

These powers granted by Parliament with caution, to the civil power in aid of the military.

3. As noticed in the last Chapter, the Army, from the earliest period, was permitted to pass along the King's highway free from the payment of tolls—and before the Prerogative of purveyance and pre-emption was abolished by the 13th sect. of the statute of 12 Charles II., c. 24—carriages were impressed for the use of the Army at a statutory rate. The same Parliament which abolished this Prerogative, granted powers of Impressment[1] to the Board of Ordnance, to facilitate the carriage of Ordnance and Navy

No power of impressment for the Army till 4 William & Mary, c. 13.

[1] 2 Car. II., c. 20; 1 James II., c. 11.

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stores, but gave no such powers for the Army; therefore before Parliament granted this power of impressment by the statute of 4 William & Mary, c. 13, the Crown had no statutory facilities for the Movement of Troops from one to another part of the kingdom.

Power withheld intentionally, to prevent the troops being used against the people.

4. That this power was intentionally withheld cannot be reasonably doubted, for so long as the troops remained stationary—in the fortresses on the coast—there was little occasion to fear that they would infringe the liberties of the people. On the occasion of William III.'s Accession, it was a matter of necessity that while he held his own Forces in one mass he should disperse the Army of James II. in small numbers and in outlying places,[1] to prevent the latter from any united action. Afterwards it was found useful, when the troops were loyal to the King, to have the power of moving them from time to time into different quarters, that no intimacy between themselves and the people might ripen into friendship. To counteract this policy of the Crown towards the Army, it was proposed in the first year of George I.'s reign to localize the troops, by limiting particular regiments to particular districts; but the Duke of Marlborough[2] defeated this proposal in the House of Lords by showing that such restriction would (as the authors of it intended) prevent the Crown from using the troops in any case of insurrection.

Proposal to localise troops.

Terms in which the power is conceded.

5. The terms in which the power of impressment was originally conceded are substantially the same as in the Mutiny Act, 1868. Every Civil magistrate, on an order from the Crown, is bound to provide certain conveyances, at a statutory price paid down, to travel with a defined weight a given distance, with penalties imposed upon any military officer who abuses the impressed articles.

Its execution in the hands of a civil minister.

6. Every order of the Crown must bear the Countersign of a Responsible Minister, and that Minister has always been the Secretary at War. The fact of his being a Civil servant and not a Military officer, was urged

[1] See the quarters of James II.'s army, assigned by the Prince of Orange; 'History of Desertion,' p. 94.

[2] 7 Parl. Hist., p. 61, and Cox's Life; see a List of Quarters for 1717; Ordnance Bk. p. 370.

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with great force in one instance as illustrative of the great constitutional safeguard possessed by the people against the encroachment of the standing Army. "The Commander in Chief," said the Duke of Wellington,[1] to prove the subordination of the military to the Civil authorities, "cannot at this moment (1837) move a corporal's guard from London to Windsor without going to the civil department for authority—he must get a route."[2]

7. The check, great as it was—for it is a thing rather of the *past* than of the *present*—gave the Secretary at War a financial control, and the Secretary of State held a higher duty regarding the movement of troops; now, when they are required to act in aid of the civil power, they move under the route of the Secretary of State. Practice altered.

8. In examining the clauses in the Mutiny Act of 1868, it will be noted by the reader that the whole machinery for carrying out the impressment is vested in the Civil[3] power—interposed between the Army on the one hand, and the People on the other. If the rates are in any particular instance unfair, the Magistrate (acting within limits) has the power of increasing them, and if any oppression arises from the Military, the appeal is first to the Civil minister having charge of the War Department, and then to the House of Commons. Any oppression in these powers, the appeal is to the civil ministers.

9. When Railways were substituted for Highways, the public interests, so far as they were affected by the carriage of troops, appear to have been entirely overlooked. The troops were neither freed from toll, nor at liberty to have carriages supplied at a statutory rate. In 1842[4] they As to railway carriage.

[1] Evidence, p. 371, on Civil Administration of the Army, 1837.

[2] See the form of a Route in Appendix LXIV. Since the Crimean War the forms are signed by the Secretary of State and issued out of the War Office in blank to the Quartermaster-General, to be used by the military at any time. The Marching Books at the War Office commence from A.D. 1688-9, and end in 1856-7.

[3] In the clause for impressing carriages in emergencies "the *First Clerk*" in the Military Department empowers the General to act—a strong illustration of the Duke of Wellington's remark.

[4] 5 & 6 Vic., c. 55, sec. 20.

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were to travel *by agreement*, taking, as any sportsman might do, his arms and ammunition, but in the year 1844[1] Parliament laid down a statutory rate of carriage, but unfortunately with such obscurity in language, that the Superior Courts (in Ireland) have been unable to understand the meaning of the Act.

Railway Carriage Acts, 1842 and 1844.

10. Upon the right construction of it these observations are hazarded:—(1) That the Act has reference only to persons travelling by order or route at the public expense; (2) that the railways are bound to permit these persons to travel by *any* train (express or otherwise) going "at usual hours;" (3) that an officer is entitled to a first-class carriage at twopence a mile, and to take one hundredweight of personal luggage without extra charge, and any excess at one half-penny per pound; and (4) that a soldier, &c., is entitled to a carriage with seats, with space for reasonable accommodation, and protected from weather, at one penny per mile, with half a hundredweight of luggage, &c.

Construction of Acts—(1) as to officers and soldiers.

(2) as to stores.

11. As to all *public* baggage, stores, arms, ammunition, and other necessaries and things (except gunpowder and other combustible matters) the Act states that they shall be conveyed at charges not exceeding twopence per ton per mile, the assistance of the military or other forces being given in loading and unloading such goods, but the carriage of gunpowder and other combustible matters cannot be insisted upon by the Crown at any rate of charge.

Questions on the Acts.

12. Whether "it is competent for the Government to send any public baggage connected with either the army, the navy, the marines, or the police, to the railway with two or three or 100 men, as the case may be, to assist in putting that baggage upon the railway, having men also to unload at the terminus to which the baggage was destined, and to do that wholly regardless of whether troops are being conveyed or not," has not been expressly decided, though Mr. Justice Keogh, in a late case, expressed his opinion "that it was the intention of Parliament, seeing that the railways were getting great privileges, becoming in fact the monopolists of the highways of the

[1] 7 & 8 Vic., c. 85, sec. 12.

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country, that they should make a return to the State or the public, and that this Act we got, as the preamble states, to make provision 'for the public advantage.'"[1]

13. The subject of the carriage of troops, &c., was submitted to the notice of the Royal Commissioners on Railways in 1866, in a very able paper; but no recommendation adequate to the requirements of the public service was made in their Report laid before Parliament in 1867.[2]

Report of Railway Commissioners, 1866.

14. The quartering of troops was one of the main difficulties which the Ministers of the Crown, until the year 1793, had to contend with in seeking at any time from Parliament a large increase to the standing army. It was the most obvious course that a soldier should have his residence provided for him by the Crown, but when the Army was established, Parliament would not consent to have the men drawn away from the affairs of Civil life. In many instances they were permitted to work in trade as outlyers,[3] and the horses of the cavalry were turned out to grass. Therefore the Opponents of the Standing Army—at all times numerous in the early period of its History—would not sanction the erection of a sufficient number of Barracks to accommodate a large number of men.

Erection of barracks opposed.

15. The Barrack accommodation of England in the year 1697,[4] appears to have been sufficient for 5000 infantry, for in that year an estimate was submitted to Parliament on this basis for furniture, and one for tents for 6000 infantry and 4000 horse. The misery of the troops was therefore great, of which an illustration is incidentally afforded in a letter addressed by Mr. St. John, under date of September, 1707, to the Treasury, in these words:—"A memorial of the several captains of the Lord

Barrack accommodation in 1697.

A.D. 1707.

Misery of the troops.

[1] Great South and Western Railway of Ireland *v.* Attorney-General, April, 1864, and May, 1865. [2] See par. 133 of the Report, and Mr. Milton's paper.

[3] Lord Palmerston's evidence before Finance Committee, 1828, and 6 H. D. (2), p. 979; see King *v.* Beaulieu, 3 Mau. and Sel., p. 229. [4] 12 Com. Journ., p. 54.

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Paston's regiment[1] having been presented to the Prince, setting forth that immediately after the regiment was raised and reviewed by his Royal Highness in the year 1704, they were ordered into the garrison of Portsmouth, where, by reason of their continuance near a year and a half, *the sickness of the place, want of firing, and the badness of the barracks*, the regiment was reduced *by death and desertion* to about *one-half of their number*."

A.D. 1716.

Barracks built with small accommodation and at little cost.

Barrack Estimate, 1717.

16. When barracks *were* built, the nature of the accommodation is shown by the estimate upon which the Ordnance vote was taken in 1718:—"An estimate of barracks proposed to be built in North Britain, pursuant to His Majesty's directions, for preventing the robberies and depredations of the Highlanders; calculated for five beds in each room, of 18 by 17 feet square, and to be enclosed by a wall of 18 feet high, and 2 feet 6 inches thick, with four small towers for their defence; the whole to be built of rough stone and good mortar." Then follow the items for the erection of four barracks at the cost of 9300*l.*, viz.:—At Kilwhimmin, to contain about 300 men; at Ruthven, to contain about 250 men; at Bernera, in the county of Ross, to contain about 150 men; at the Ford of Innersnait, to contain about 100 men.[2]

Letter of Board of Ordnance.

17. With the estimate the Board of Ordnance sent to the Duke of Roxburgh this explanation:—"Your Grace will be pleased to observe that we have calculated five beds for ten men in as little room as can be well allowed, and for good management, the houses are designed three stories high, besides garretts. As the whole amounts to so considerable a sum, that we presume it must be supplied by Parliament, we desire it may be laid before His Majesty, that we may receive his pleasure therein so as to include it in our estimate for this year's service."

18. It was not the general spirit of parsimony,[3] but the

[1] W. O. Ord. Bk. 136, p. 3.

[2] Bk. 20, p. 366.

[3] In 1710, when it was represented that the building of fifty churches "within the bills of mortality" was a necessary want, the sum of 350,000*l.* was readily granted (to continue in course of payment from 29th September, 1716, to 29th September, 1719), "notwithstanding," as the Commons' Address expressed it, "the

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strong feeling then entertained against a Standing Army, that induced the Ministers to frame *such* an estimate for barracks, and so very rarely submit *any* barrack estimate to Parliament. Consequently in the year 1792, all the barrack accommodation in Great Britain and the Channel Islands (in 43 fortresses and garrisons) would only house 20847 men of the artillery and infantry.

Not the general parsimony of Parliament, but unpopularity of the Army.

19. Whenever the Army was augmented, the troops were put under canvas, and so remained in the most inclement seasons of the year. "Great complaints," wrote Mr. St. John to Colonel Morgan, on the 18th October, 1707,[1] "being made of the ill condition which the two regiments in the Isle of Wight are in from their long encampment there, and especially at this season of the year, His Royal Highness directs me to recommend it to you to provide the best accommodation you can for such of them as cannot be quartered upon public-houses in the Island, by hiring *either barns, or empty houses* whereby the soldiers may be *kept from perishing* through the *severity of the weather*, until Her Majesty's further orders shall be given concerning them."

Misery of Encampment to the Troops.

20. When the difficulties began to arise, in 1739-40,[2] about the billeting of troops, the most obvious remedy would then have been the erection of barracks; but "the people of this kingdom," said General Wade, "have been taught to associate the idea of Barracks and Slavery so closely together, that, like darkness and the devil, though there be no manner of connection between them, yet they cannot separate them, nor think of the one without thinking at the same time of the other," that the Ministry dare not make the proposal.

A.D. 1739-40.

The people's Aversion to Barracks.

21. Throughout the century the same feeling prevailed.

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long expensive war in which we are engaged, and the pressure of heavy debts under which we labour."—6 Parl. Hist., p. 1013; 17 Tin. Hist., p. 371; 11 Parl. Hist., p. 1424.

By way of contrast to the expenditure of 1718, take that of 1859-60 on the new Palatial residence of the Guards at Chelsea, built at a cost (including ground but excluding furniture) of 296,831*l.*: the first sum is under 12*l.* a man, and the second not under 255*l.* per man.

[1] Letter Book 136, p. 28.

[2] 11 Parl. Hist., p. 1422, and see pp. 1448, 1459.

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Blackstone in 1766 wrote[1]:—"'To prevent the executive power from being able to oppress,' says Baron Montesquieu, 'it is requisite that the armies with which it is entrusted should consist of the people, and have the same spirit with the people; as was the case at Rome, till Marius new-modelled the legions by enlisting the rabble of Italy, and laid the foundation of all the military tyranny that ensued.' Nothing then, according to these principles, ought to be more guarded against in a Free State, than making the Military power, when such a one is necessary to be kept on foot, a body too distinct from the people. Like ours, therefore, it should wholly be composed of Natural-born Subjects; it ought only to be enlisted for a short and limited time; the soldiers also should *live intermixed with the people; no separate camp, no barracks, no inland fortresses, should be allowed.* And perhaps it might be still better, if, by dismissing a stated number, and enlisting others at every renewal of their term, a circulation could be kept up between the army and the people, and the Citizen and the Soldier be more intimately connected together."

A.D. 1766.

22. In the year 1786, the same feeling found expression when Mr. Pitt[2] laid his proposals before the House of Commons, and moved resolutions for the erection of fortifications to protect Portsmouth and Plymouth Dockyards, but failed in a measure deemed essential for *our national safety.* Public opinion was strongly roused against the scheme, mainly upon the ground that it either necessitated the maintenance of, or at least enabled the Crown to maintain, an increased number of troops. "The system of fortification," said Mr. Pitt, "had been dragged forth to public view as deserving the severest censures which could be thrown on any measure of Government; and there had been attempts to excite against it the feelings, the passions, and even the most estimable prejudices of the nation. It was represented as novel in its principle, as unconstitutional in its tendency, by laying a foundation for the increase of the Standing Army, and as calculated to divert into either a useless or a dangerous channel those resources which ought rather to be applied to that *great*

A.D. 1786.

Mr. Pitt's fortification scheme rejected on the same grounds.

[1] Vol. 1 (p. 413, edit. of 1766) of Commentaries.

[2] 25 Parl. Hist., p. 1096.

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*foundation of our strength, of our glory, and of our characteristic superiority* over the rest of the nations of Europe—*our Navy*. Those were in themselves substantial objections, and such as, if they did really apply to the case, ought to carry with them an insuperable authority." They did so prevail, for the House, upon a division at seven o'clock in the morning, by the casting vote of the Speaker, refused to accept the resolutions of the Minister.

23. Turning to Ireland, the Barrack question must be looked upon in an entirely different aspect. There the Irish Parliament readily trusted the Crown with compulsory powers for the acquisition of land for barrack and defensive purposes; and after William III. had reconquered Ireland, the Parliament, by the 9 William III., c. 4,[1] granted 25,000*l.* for building barracks in the most useful, convenient, and necessary parts and places in the kingdom, according to the directions of the Chief Governor. The Act directed that the barracks were to be forthwith begun, and to be carried on as fast as the sum of 25,000*l.* could be levied.

Barrack establishment in Ireland, 1697-1800.

A.D. 1697.

Statutes of Irish Parliament.

24. To secure the adoption of this policy, the King, by Letters Patent,[2] of the 24th December, 1700, granted Corporate powers to certain persons named therein, "to continue in perpetual succession by the name of the Trustees of the Barracks in and throughout the kingdom of Ireland, and by that name to be capable at law to sue and to be sued, with full power, with the approbation and consent of the Chief Governor or Governors of this kingdom, to take grants and leases, and to purchase houses and lands in fee simple, to them and to their successors, not exceeding the yearly value of 400*l.*, with such clauses and under such covenants as to the said Trustees and their successors, or to the major part of them, should seem convenient; which said grants, leases, or purchases, so to be taken or made, were thereby declared to be to the use of and in trust for the maintaining and supporting the

A.D. 1700.

Charter for barrack trustees.

[1] Vol. iii. Irish Stat., p. 356.

[2] Vol. ix. ib., pp. 506-7.



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said barracks and buildings, and for the more commodious quartering the Army of this kingdom."

25. By 1st Anne, c. 4., s. 12, a grant of 6*d.* in the pound was made for building Barracks in the city of Dublin; and by the 6th Anne, c. 14, s. 8, it was provided that after the 29th September, 1708, no soldiers should be quartered in Dublin, save on their march to the sea or in time of commotion—a prohibition soon after repealed.

A.D. 1703. Dublin Barracks.

26. The first Irish statute that gave the Crown (acting through the Lord-Lieutenant) Compulsory powers for the purchase of land for barrack purposes was 4 Geo. I., c 7. It may be assumed, from the language in which it is drawn, that the title to the lands where barracks, had been or were in the course of erection, was at least *doubtful;* for the Act vested these lands *absolutely* in the Crown, giving the owners a claim to a jury compensation. The Act enabled the Crown to issue a Commission, appointing persons to act as Commissioners for barrack purposes, with power to survey, mark out, and acquire the lands needed for the erection of barracks. The Act (which applied also to sites for lighthouses)[1] was extended in the reign of George II., to the acquisition of sites for Hospitals needed for sick soldiers.

A.D. 1717. Grant of compulsory powers for purchase of barrack and hospital sites to Barrack Commissioners.

27. Upon the threat of invasion from the Pretender, the Irish Parliament voted supplies for fortifications and batteries at Cork Harbour; but difficulties arising upon the acquisition of land, the Parliament[2] authorized the Crown to erect the works "on such lands, and in such places as might be judged most fit for the purpose," and vested the premises in the Crown, subject to the payment of a "yearly rent," to be ascertained by the Barrack Commissioners. Land adjacent to *any* fortified town or fortified fort in Ireland, which the Crown might deem it expedient to strengthen, might be taken on the same terms.[3]

A.D. 1745. Extended to battery sites.

28. By the 7 Geo., III. c. 6, arrangements hitherto temporary were made permanent; (1) it terminated the powers that had been conceded by William III.'s Charter to

Powers made permanent, and estates of barrack

[1] The Act was temporary, but continued in force by (10 Geo. I., c. 4) 20 Geo. II., c. 9, to 24 June, 1758.

[2] 21 Geo. II., c. 10, sect. 5.

[3] 29 Geo. II., c. 8; 31 Geo. II., c. 9; 1 Geo. III., c. 7.

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the Barrack Trustees, and all the lands acquired by them were vested in His Majesty, his heirs, and successors, "for the use of the said *barracks;*" and (2) it enabled the Barrack Commissioners to acquire such sites as might thereafter be needed for barracks and lighthouses, and to sell the *title* of the Crown in several barracks then existing, that had gone into ruin and decay.

trustees vested in the Crown.

29. These powers were not thought enough, for in 1796 the Irish Parliament[1] gave to the Commissioners or Overseers of Barracks and their successors greater facilities, and authorised them—upon a previous communication with the Treasury, and by the direction of the Lord-Lieutenant—to purchase or hire barrack sites upon any terms. On account of the great increase of the Military establishment of Ireland, it was often found expedient to send one or other of the Commissioners into different parts of the kingdom to expedite and provide quarters for the troops, and therefore the 39 Geo. III., c. 26, was passed to enable one Commissioner, upon the authority of the Lord-Lieutenant, to execute the powers conferred upon *all* the Commissioners, and to render his acts valid.

A.D. 1796. Powers extended.

30. Probably after this Act had been passed, a Barrackmaster-General *for Ireland* was appointed; for in the 40 Geo. III., c. 26, mention is made of James Lord Tyrawly as acting in that capacity, under direction of the Lord-Lieutenant (Marquis Cornwallis), though no statutory powers were ever given to him.

A.D. 1800. Barrackmaster-General for Ireland.

31. Such is the singular contrast that the history of the barrack system in *Ireland* presents to that in *England*. It cannot be doubted that the erection of barracks and military strongholds throughout that country has enabled the Government, by the dispersion of troops throughout the kingdom, to hold the people in obedience to law and order, and to their allegiance to the Throne and Parliament of Great Britain.

Effect of barrack establishment in Ireland.

32. The history of the question in Scotland is very brief. So soon as William III. had secured the throne of

In Scotland.

[1] 36 Geo. III., c. 22.



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England, he erected Fort William (1689); and after the rebellion of 1715, barracks (as it has been previously shown) were erected in different parts of the kingdom for the purpose of holding the turbulent in check. In 1728, Fort Augustus, which had existed as a barrack since 1719, was greatly strengthened; and in 1740, and again in 1780, Fort William was enlarged and made a defensive work of greater strength.

Barracks in the Colonies.

33. In the Colonies, where Her Majesty's forces represent Imperial rather than Local interests, oftentimes (as in Jamaica) holding possession against the native population, billeting is little resorted to. In 1706, when the troops were sent from England to occupy the Leeward Islands, the Ordinance of the Local Government provided them with quarters. The Act was temporary, and upon its expiration the troops had to suffer the inconvenience of being put out of their quarters until the Local Government could be prevailed upon to renew it. The Secretary at War was urgent, asking the Governor and Council, through the Council Office,[1] to use their best endeavours on passing the next law, to have the same "continued for so long time as Her Majesty's Government should require the stay of the troops in these islands."

Provided by local Government.

In America. Barrackmaster-General.

34. In America the subject was dealt with in a different manner, and, when billeting could no longer be carried on under the authority of law, a Barrackmaster-General was appointed to provide Barrack accommodation under the orders of the Commander-in-Chief in that country, out of the "Extraordinaries" of the army.

All barracks under Ordnance Department.

35. To resume the subject of Barracks in Great Britain—they were from the earliest period in the charge of the Ordnance Department, and regulated by Royal Sign-Manual Warrants, which it was the duty of that Board to see carried out. The troops occupied them, subject to the payment of barrack damages, assessed by the Ordnance

[1] Letter Bk. 135, pp. 55, 60.

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officers, and deducted (if not otherwise paid) out of their pay. Thus the Rules, Orders, and Regulations[1] for the "good government and preservation of the barracks, in the several garrisons, towns, forts, castles, &c., in Great Britain and the foreign garrisons," made in 1737, were prefaced thus:—"Whereas the Master-General of Our Ordnance hath laid before Us a representation, made him by the principal officers of the same, that by a general survey taken of the several Barracks in this kingdom, they find them in a bad condition, and that for want of proper regulations, not only the buildings have been very much damaged, but also the bedding, furniture, and utensils very much abused, embezzled, and destroyed." A system of stoppages[2] was then initiated "for damage that had been wilfully done," and for payment thereof by the troops, or by deduction from their pay according to the estimate (on oath) of the Barrackmaster.

A.D. 1737. Barrack regulations.

36. The 7th clause[3] gave the Ordnance Board power to make regulations:—"As the care of the Barracks is under the direction of the Office of Ordnance, the Master-General or Lieutenant-General and principal officers of the same are hereby authorised and empowered to make such further regulations as from time to time shall be necessary for the preservation of the building, utensils, and other furniture thereunto belonging." These rules and regulations were reissued in the following reign,[4] under date of 22nd December, 1761, and continued in force until revoked by the Warrant of 24th March,[5] 1795, which gave the Barrackmaster-General jurisdiction—a subject that will be considered in the following chapter.

A.D. 1761.

37. The Billeting of a large Standing Army was probably the greatest social evil[6] endured by the people when William III. reached England. A proclamation was therefore put forth in January, 168$\frac{8}{9}$, by his authority, prohibiting any to quarter in a private house, without

Great grievance of billeting. Proclamation of Prince of Orange.

[1] Ord. Bk., p. 326.
[2] Order for stoppage, 18 Feb. 1745, W. O. Letter Bk., pp. 177-188. [3] P. 828.
[4] O. B. (36), p. 96. [5] 1st Report of Military Enquiry, p. 38.
[6] 'History of the Desertion;' vol. i. State Trials (Wm. III.), p. 61.

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the free and full consent of the owner; and that all houses should be deemed private houses, except victualling-houses, houses of public entertainment, and such as sell wine or other liquor by retail.[1] In the latter houses troops were to be quartered by the Chief Magistrate and Justice of the Peace, acting through the constables; and no officer or soldier was to take up his quarters without such direction, under pain of being cashiered or otherwise punished.

38. There being *rebellion* in Ireland and war with France, Parliament was appealed to, and did temporarily (till the 20th December, 1690), in terms of extreme caution (by the 2 William III.), suspend the Legislative prohibitions against billeting. After reciting the Petition of Right and the 31st Car. II., c. 1, the words of the Act[2] were: "But forasmuch as at *this present time* there is a rebellion in Ireland, and *a war* against France, whereby there is occasion for the *marching* of many regiments, troops, and companies in several parts of this kingdom *towards the sea coasts and otherwise*, be it further enacted by the authority aforesaid, that for and during the continuance of this Act, *and no longer*, it shall and may be lawful for the constable, tythingmen, head-boroughs, and other chief officers and magistrates of cities (boroughs), towns, and villages, and other places in the kingdom of England, dominion of Wales, and town of Berwick-upon-Tweed, and for no others, to quarter and billet the officers and soldiers in their Majesties' service in inns, livery stables, alehouses, victualling-houses, and all houses selling brandy, strong waters, cyder, or metheglin by retail, to be drank in their houses and no other, and in no private houses whatsoever; and if any constable, tythingman, or such like officer or magistrate as aforesaid, shall presume to quarter or billet any such officer or soldier in any private house without the consent of the owner or occupier, in such case such owner or occupier shall have his or their remedy at law against such magistrate or officer for the damage that such owner or occupier shall sustain thereby."

Power to billet granted by Second Mutiny Act for a limited period.

Power to billet in public-houses.

[To 20th December, 1690.]

39. Whether it was the intention of Parliament to sanc-

[1] See Appendix LXV.

[2] 1 William & Mary, sess. 2, c. 4, sec. 17.

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tion the continuous Residence of troops on Billet became (in later years) a matter of controversy.[1] Troops being *on march*, the Justices were to assess reasonable rates for all necessary provisions for one or more nights, such rates being within the compass of the subsistence-money paid to the soldier (viz., for each trooper, 2*s.* a-day; each dragoon, 1*s.* 2*d.* a-day; and each foot-soldier, 6*d.* a-day): but in places appointed for their *residence or quarters* the Justices' assessment was to be for one night only. After that night, the householders were required to furnish the officers and soldiers with dry lodgings, suitable room for horses, with fire and water and necessary utensils to dress their meat, *and not otherwise*, unless the officers or soldiers should make a contract or agreement with them for provisions.

Billeting for one or more nights on march.

40. What was admitted with extreme caution, as a temporary expedient, became, no doubt, a permanent arrangement. "The misfortune is," said Mr. Gybbon,[2] "those who are for the keeping up Standing Armies have generally the drawing up of the Military Bills; and this makes it very easy for them to introduce imperceptibly very material and dangerous variations when they are not looked after. But this is not the only misfortune; they have their execution after they are passed into laws, and in the execution they put their own interpretation on them." "We see," said another speaker, "what an encroaching thing an army is. Free lodging for soldiers is now (1741) become a continual and settled thing upon public-houses."

Become perpetual.

41. It is said that until the 10th Anne the billeting-power was not compulsory, and in the 12th Anne, c. 13, s. 21, an express limitation was imposed by these words:— "That the Act should not compel the quartering of any officer or soldier, unless it be within ten miles of the palace or place of Her Majesty's usual residence, or within ten miles of the place where Her Majesty shall be present, or in some garrison or garrisons where sufficient barracks are not provided for them, or unless it be in the marches of such officers or

Limitation in 12 Anne as to place and time for permanent quarters.

[1] Mr. Sandy's Speech, 11 Parl. Hist., p. 1395; Mr. Gibbon's, p. 1407.
[2] 11 Parl. Hist., p. 1409.

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soldiers, and that in such marches no person shall be obliged to quarter them more than six days at a time."

Powers construed strictly.

42. In the first case that came before the King's Bench, after these powers had been conceded by Parliament, the Court declared the Act to be a great infringement upon the liberties of the subject, and gave a strict interpretation to its language.[1] The defendant, having wrongfully billeted a dragoon in the plaintiff's house, was made responsible to him in damages *for all* the injury done by the intruder placed there by the defendant's act. Magistrates and Constables, warned by this decision, refused[2] to billet the Guards in Westminster, *as not being troops upon the march*, and hence originated the special provision which has since continued in the Act for quartering them there.

Powers are in control of the civil authorities.

43. It must be deemed a protection that the power has been conceded so that the exercise of it is vested in the civil authorities. "The general view of the Act was," said Lord Kenyon,[3] "to preserve, as much as was possible from the nature of the thing, the control of the Civil over the Military power, and therefore it committed the quartering of troops to the regulation and government of civil officers."

Power absolutely unpopular.

44. But, exercised with as much consideration for the rights and feelings of the public as possible, the power cannot fail to be unpopular—in the years 1739-40 and 1792 causing considerable apprehension to the Secretary at War, and others in charge of the king's Government, that it would not be possible to execute it.

Billet involved subsistence of the soldier.

45. The receipt of a billet involved also the necessity of subsisting the soldier sent with it; and the payment for subsistence was often long delayed, and very inadequate in amount when paid. In the 8 & 9 William III., c. 13, clauses were inserted—contrary to the provisions of all earlier and later Acts[4]—to enable the publican to buy out the soldier at a stated sum, or to pay him, with

[1] Parkhouse *v.* Foster, 1 Lord Ray, p. 479.
[2] 6 Anne, c. 74, sec. 5.
[3] King *v.* Calvert, 7 Te. Rep., p. 726.
[4] 10 Com. Journ., pp. 309, 478.

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lodging, 5*d.* for maintenance; and the reason why these clauses were inserted was the absolute inability of the Government—from want of money—to pay the soldiers.[1]

Controversy and difficulties on the clauses.

46. Questions therefore were constantly arising, and obstacles brought to the notice of Parliament[2] and of the War Office (as the printed papers in the Appendix[3] will show) until, in the year 1739, the publicans refused to supply the men with rations at statutory rates under their billets. The Mutiny Act in force provided nearly in the same terms as the earlier Act,[4] that the officers and men should "be received" by the owners of the inns, &c., and pay such reasonable prices as should be appointed by the Justices; but there was no *express*[4] statement that the allowance should not be in excess of the subsistence-money, though another clause provided what the limit of the subsistence-money should be, and within which the paymaster was authorised to pay the claims of the innholders.

Justices assessed the cost of subsistence at a higher rate than Parliament allowed.

47. In some instances the Justices assessed the price of "the necessary provisions" at a higher sum than the subsistence-money, and in others the innholders, unless satisfied with the Justices' assessment, refused to make the supply. If the first of these objections had prevailed, either the pay of the Army must have been raised from time to time—not so much by the authority of Parliament as of the local Justices—or the officers and men left indebted for their quarters.

Meeting of Members of both Houses.

48. In this dilemma a meeting of members of both Houses took place, with a view of determining what course should be adopted.[6] It resulted in submitting amendments to Parliament on the billet clauses, to the effect (1) that a statutory rate should be fixed for subsistence which — under any considerations — was to be provided to the troops *on march;* and (2) in other cases the publican was to have the option (on notice) of supplying the soldier with

[1] 11 Parl. Hist, pp. 1413, 1440.
[2] 12 Com. Journ., pp. 79, 148; 11 ib., pp. 202-13.
[3] Appendix LXVI.
[4] 11 Parl. Hist., pp. 1388, 1479.
[5] Compare 13 Geo. II., c. 10, with 14 Geo. II., c. 9.
[6] Appendix LXVII. (3).

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candles, vinegar, and salt, and three quarts of beer a-day *gratis* (allowing him also fire and cooking utensils), and then the soldier was otherwise to maintain himself as he pleased.

Statement of Secretary at War to the House of Commons.

49. The Secretary at War,[1] in stating the case on behalf of the Government, did not disguise his apprehensions.[2] Now the question had been started, the soldiers would in a short time meet with the same refusal in every quarter of the three kingdoms; "that no innholder will furnish the soldiers quartered on them with diet or small beer, or with firing, salt, or any kitchen utensils for dressing the provisions they buy for themselves, which, in my opinion, will make it impossible for the soldiers to subsist, especially when they are upon a march from one part of the kingdom to another; and the necessary consequence of this will, I think, be a *mutiny in the Army*, which I *dread* much more than any danger that can arise from obliging innkeepers and others to furnish the soldiers quartered upon them with diet and small beer, at such reasonable rates as the Justices shall appoint, not exceeding a groat a-day."

Importance of the debate.

50. The debate is the most important that occurs for many years on the Standing Army, and Mr. Pulteney's view found expression in these words:[3] — "It must be admitted, Sir, that a Standing Army in quarters will always be more troublesome to the people than a Standing Army in barracks; but for this very reason I shall always be for keeping our Army in quarters, that the people may be sensible of *the fetters* which are *preparing* for them before such *a number can be forged* as may be sufficient for shackling them close down to the ground. The people have still a power to prevent, or put an end to the keeping up of too numerous an army; and I hope they will always think of exercising this power *before it be too late*. That they may do so, I am for keeping our Army in their view, by having the soldiers quartered among them. If the soldiers were all kept in barracks the people would be insensible of their numbers, and might not perhaps think of reducing them by law till the Army grew *so numerous*, and became so *closely united* as to be able to support *itself* against law."

[1] See also Mr. Pelham's Speech, pp. 1418-9. [2] Parl. Hist., pp. 1405, 1406.
[3] Ib., p. 1448.

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Notwithstanding this opposition, the amendments were accepted, and the Standing Army was continued without further opposition on this ground till the year 1792. Amendments carried.

51. The Quartering of troops in America between the years 1765 and 1770 gave rise to greater troubles between the Colonists and the Mother country than any that had arisen at Home. Barracks had been provided by the colonists sufficient for the accommodation of the troops under *ordinary* circumstances; but as the Stamp Act had aroused a spirit of opposition to the Mother country, a large body of troops was sent to America to hold the Colonists in subjection. In this state of feeling, Parliament assumed to legislate for the quartering of troops there, and to impose upon the inhabitants a charge, small and insignificant in amount, for the supply of certain necessaries, such as "salt, vinegar, cyder, and beer to the troops." Billeting in America—differences with the mother country.

52. We have seen that in the earlier case of the Leeward Islands the Home Government did not interfere, save by representation to the Colonial Government; but in the case of America the British Parliament took the power into their own hands, and by the 5 Geo. III., c. 33, obliged the Civil authorities in America, upon the order of the Commander-in-Chief, to provide for the troops (1) in the barracks provided by the colonies, (2) in the inns, &c., and (3) uninhabited houses, which the Governor and Council were to authorise the Civil authorities to take and fit up for the reception of troops. British Parliament insists on quarters being provided.

53. The men were to be provided with certain necessaries, as "fire, candles, vinegar, and salt, bedding, utensils for dressing their victuals, and small beer, or cyder, or rum," *gratis*. Those in the inns, &c., by the innkeeper, and those in barracks or uninhabited houses by persons appointed by the Governor and Council, or — in their default—by the Civil authorities, who were to be reimbursed by the Respective Provinces. Necessaries to be provided.

54. The House of Representatives of New York,[1] in direct

[1] 1 Massey's 'England,' p. 315.

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disobedience to the Imperial statute, refused to make provision for supplying these "necessaries," and an Act of Assembly was passed for furnishing the Barracks in the city of New York and Albany, omitting (advisedly) "salt, vinegar, cyder, and beer," from the Act.

House of Representatives in New York refuse compliance.

55. The 5 Geo. III., c. 33, was an annual Act, and its re-enactment in the two succeeding years was followed by similar acts of disobedience from the New York Assembly. In this position of antagonism the Imperial legislature sought to support its authority by restraining and prohibiting the House of Assembly[1] from all legislative acts until this provision had been made for the King's troops; and in order to enforce it in the province of New York, the 7 Geo. III., c. 59, enacted,[2] that, "until made by the Assembly, it should not be lawful for the Governor, or for the Council for the time being, of New York, to pass or give his or their assent to, or concurrence in, the making or passing of any Act of Assembly; or his or their assent to any order, resolution, or vote in concurrence with the House of Representatives for the time being within the said colony, plantation, or province; or for the said House of Representatives to pass or make any bill, order, resolution, or vote (orders, resolutions, or votes for adjourning such house only excepted) of any kind, for any other purpose whatsoever; and that all acts of assembly, orders, resolutions, and votes whatsoever, should be null and void, and of no force or effect whatsoever."[3]

5 Geo. III., c. 33, renewed.

Functions of the New York Assembly suspended.

56. Subsequently two clauses — offered by an independent member (Mr. Pownall), in a spirit of conciliation and compromise — were accepted by the British Parliament. The first declared that the 5 Geo. III., c. 33, should not be put in operation in any province during such time as any law confirmed by his Majesty should be in force therein for providing quarters for His Majesty's troops,[4] and the other enabled the civil authorities and the Commanding Officer, by mutual agreement, to provide quarters in any manner most convenient to the troops and to the country. With these

Clauses of compromise inserted in Act of Renewal.

[1] 6 Geo. III., c. 18; 7 Geo. III., c. 55.
[2] Vol. ii. p. 874*g*.
[3] 16 Parl. Hist., p. 606.
[4] 9 Geo. III., c. 18.

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clauses the Act was from time to time renewed till the Americans declared their Independence, when the last Act (16 Geo. III., c. 11) expired.

57. The arrangement of 1739-40 was not accepted by the innholders as fair or satisfactory, and, from the tone of the Secretary at War's speech, it is obvious that he acted rather from a sense of "dread" of the Army than of justice to his fellow-citizens. Their manner of meeting this oppression was the same that was resorted to in James II.'s reign,—the public houses were closed, and the troops refused admittance. In 1759 a petition[1] was presented to the Commons from Winchester, complaining of the hardships sustained by the petitioners from billets: that not less than twenty-six public houses had been given up, only four inns and thirty-two small public houses remained open in the city and neighbourhood, and that these must be closed unless some relief was given. The same feeling had so strongly increased in Sussex, and other places near to the coast, that it had become a practice with the publicans, as a class, to take down their sign-boards and throw up their licenses upon the approach of troops ordered to be quartered on them.

Amendments of 1739-40 not satisfactory to publicans.

Public-houses closed to avoid billets.

58. These proceedings were obviously injurious to the Military Service of the Crown, and the Law Officers were consulted in 1793[2] as to the measures that should be taken to put a stop to them. The disease appeared to them too chronic to be cured by punishment, and indeed they doubted whether a prosecution would be successful. The most advisable course therefore was to *apply to Parliament for proper regulations on the subject*, and they ventured to suggest it.

A.D. 1793.

Public service impeded.

59. The remedy was not, however, sought for in the Constitutional manner, by an immediate application to *Parliament* for proper regulations for billets; but out of the Extraordinaries of the Army a new Military Department was established for the erection of barracks throughout

Remedy in the establishment of a Barrack Department.

[1] 26 Com. Journ., p. 600.

[2] Appendix LXVI. (8).

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England. In the year 1795 an Act was passed for a *limited* time (the increase of expense has become *permanent*[1]) to give a larger allowance to the innkeepers, and the Appendix[2] contains a table showing the gradual increase of this allowance from 1795 to May, 1858. A further sum of twopence halfpenny per man for bed, &c., was given by War Office Circular of April, 1859,[3] on the recommendation of a Select Committee of the House of Commons[4] in 1858, "that the *soldier should not be an unwelcome guest to the publican.*"

Foreign troops cannot be billeted.

60. Little more need be said on the subject of billets, as the detailed provisions of the law will be found in the Mutiny Act. If foreign troops should ever be in either of the three kingdoms, the Crown would not be entitled to billet them under the Mutiny Act. In 1756 this difficulty arose, when the special sanction of Parliament was obtained by the 30 Geo. II., c. 2, to render such billeting legal, and in the year 1782 a similar Act (22 Geo. III., c. 26) was passed.[5]

As to quartering Guards out of Westminster, and other troops in Westminster.

61. With regard to the clause relating to the quartering of the Guards in Westminster, two doubts have at different times been raised. The first, whether the Guards, under the other clauses of the Act, can be quartered *out* of Westminster, or of parts adjacent,—which the Court decided in the affirmative;[6] and the other, whether Westminster and the parts adjacent are exempt from the billets of other troops,—upon which the Secretary at War, in 1805, was advised that such exemption did not exist, and that other troops than the Guards might be billeted there under the general provisions of the Act.[7]

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[1] The 1st Act 35 Geo. III., c. 64, was limited to the 25th May, 1796, and annually renewed by the Government (a boon not wholly without its influence in election times), till 1829, when its provisions were incorporated in the Mutiny Act. (Compare 10 Geo. IV., c. 6, with 11 Geo. IV., c. 7. [2] Appendix LXVIII.

[3] 145 H. D (3), p. 999. [4] H. D. 1858, June 25, p. 363.

[5] See also 18 Vict., c. 2, sect. 2, as to foreign troops enlisted during the Crimean War. [6] King v. Calvert, 7 Ter. Rep., p. 726. [7] Bk. 1, p. 322.

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62. Officers are entitled to proper accommodation, and are not compellable[1] to pay anything for lodging in the place where they are billeted. "An officer or soldier cannot," wrote Sir P. Yorke,[2] "demand what room in the house he thinks fit, which seems to me an oppression and contrary to the intention of the Act." Officers' billets.

63. Any damage done by the Officer or Soldier in his quarters he is personally responsible for, and all the Public incur by way of responsibility are the statutory payments granted by Parliament. As tenants under the provisions of the Mutiny Act, their property and any belonging to the Crown in their charge would, I apprehend, be free from liability for rent or to be taken in execution by the sheriff.[3] Public not liable to damage. Property of person billeted not liable to distress.

64. The half-billet system, originally introduced into Ireland, is an accommodation in substitution for Barracks, where the troops are acting in a disturbed part of the country. Houses are hired at a rent equivalent to 3*d.* per man per week, and a higher rent for officers. In March, 1843, the system was introduced into England.[4] Half-billet system.

65. Until recent years, the law of billeting in Scotland and in Ireland was that which was in force prior to the Union of these several kingdoms, respectively, with England; and, to preserve some record of it, Notes have been placed in the Appendix, relating to the law of Scotland and of Ireland on billets.[5] Law as to billets in Scotland and Ireland.

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[1] Mutiny Act, 1868, sec. 92; Bk. D, p. 223.

[2] Appendix LXVI. (3). [3] Bk. 721, p. 9. Appendix LXVI. (4).

[4] 1843, March 8; Ordnance Circular No. 99, and War Office Circular, July, 1843; Report on Civil Administration of the Army, 1837, p. 31.

[5] Appendix, Notes K and L.

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# CHAPTER XII.

## THE BARRACK ESTABLISHMENT.

A.D. 1792-3.

Establishment of two military departments.

1. THE years 1792 and 1793 are important in tracing the progress of the Army as an Established Institution of the country, which, from the latter of these years, it may be called. Two Military departments were raised without the previous sanction of Parliament, and provided for out of the Army Extraordinaries. Both were independent departments, but over one at least the Secretary at War held a nominal control. No very definite rules appear to have been laid down for the guidance of the Chiefs of either department, and little surprise need be felt that great confusion arose as to the nature of their duty or the measure of their responsibility.

The Barrack-master-General and Commander-in-Chief.

2. The first of these departments in order of date was the Barrackmaster-General's Department, as that officer was appointed by Letter of Service of June, 1792; and the other of these departments was the Commander-in-Chief's office, which dates from 1793. The present chapter will contain the history of the first of these, as illustrative of a principle which is often the subject of controversy, viz., the expediency of adopting the Foreign or Colonial System of Military Finance[1]—that of an Executive officer of the Army, liable to the Mutiny Act, being entrusted with the Expenditure of the Public Treasure without sitting in Parliament or an effective and real financial control by a responsible Minister.

Ordnance Department superseded.

3. Prior to the Institution of the Barrack Department, the Ordnance Department, from the earliest period in our History, had the charge of the erection of barracks. The Master-General[2] and Board were men—at the time they were set aside—of established reputation and

[1] Chap. VII., pars. 46-48.

[2] Earl Cornwallis.

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parliamentary experience. They had under them Engineer officers and Civil servants, thoroughly efficient. The purchase of lands and the erection of works had for years past been *their* business, and no charge of inefficiency or neglect was then urged against them. Had the Constitutional course been adopted, the Ordnance Department would have prepared an estimate for the expenditure needed for the erection of Barracks — *all* of the board officers being responsible for it to Parliament,—that estimate would have been submitted to the Treasury, and thereby the First and other Lords would have been made responsible to the Country; and, lastly, the works would have been carried out by an experienced class of officials, having a just sense of their responsibility to the public for the discharge of duties to which they had devoted their lives.

4. The Expenditure of the Barrackmaster-General exceeded by eight or nine millions sterling the amount which was involved in the Ordnance Scheme of 1786,[1] and therefore there was every good reason for proceeding in a matter of such a vast outlay through the channel pointed out by the Constitution and for dealing with Parliament in a spirit of candour. Such a course as this was not, however, taken. The Ministry did *not* apply to Parliament for its support, but dealt with the matter wholly under the Authority of the Crown.

Large expenditure involved.

Parliament not consulted.

5. In North America, the Army in active operations was provided with barracks and quarters by a Barrackmaster-General acting as a Military officer under the immediate orders of the Commander-in-Chief. All these expenses were borne out of the Extraordinaries of the Army, and the Ministry appear to have resolved upon the adoption of this expedient of War in America for establishing barracks in Great Britain in time of peace. Taking two persons of subordinate importance—the Secretary at War, for Finance, and a Military officer for Administration—diluting responsibility in the inferiority of their agents—they proceeded to inaugurate the Barrack Establishment on the probable assumption (of which the truth furnishes the apology) that the Commons never would

Course taken by Mr. Pitt's Ministry.

[1] See Chap. I., par. 25.



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have given their sanction to the scheme had it been deliberately laid before them.

Barracks built by the War Office out of extraordinaries.

6. As this expenditure was made out of the *extraordinaries* of the Army, it did not come before the House until a considerable sum had been spent *on account*, and the credit of the Crown had been pledged to the various contractors employed in building; but an Independent Member —not waiting for the votes in supply—brought the subject before Parliament in February, 1793, by submitting, for the adoption of the House of Commons, a resolution against barracks based on the constitutional view laid down in Blackstone's work.

Debate in House of Commons, 1793.

7. Both Mr. Fox and Mr. Grey spoke strongly[1] in favour of the resolution. "Was there not," said Mr. Fox, "as much reason to be afraid of barracks now as in the year 1740? Was there more cause for jealousy of a standing Army, when we were menaced from abroad, and dreaded the invasion of a pretender to the throne? Yet, at that period, the two leading men, Mr. Pulteney and Mr. Pelham, one of whom supported and the other opposed Sir Robert Walpole, both united in reprobating the system of erecting barracks, as unconstitutional and inimical to the rights of the people. And they said well; for the mixing the soldiers with the people, by which they imbibed the same principles and the same sentiments, was the best security of the Constitution against the danger of a standing Army. . . . It was not true that the building of barracks was acceptable to all the country. There were places where it was considered, not as a benefit, but as a grievance. It might be that publicans were glad to be relieved from having troops quartered upon them, but that proved nothing; and if they were all of the same opinion, they ought not to be allowed to sell their permanent security for a temporary convenience."

Mr. Pitt's explanations.

8. Mr. Pitt's explanation[2] was that—"The circumstances of the country were such as made it necessary to adopt that mode of lodging the troops in a greater extent than formerly, and it had always been adopted as circumstances required. But even if it had been a measure entirely new, he

[1] 30 Parl. Hist., p. 490.

[2] Ib., pp. 494, 495.

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should not have been deterred by any fear of innovation from doing that which he considered as essential to the safety of the country. He denied, however, that it was an innovation. The principle was so little new and so little dangerous that in all places where troops were in general stationary, barracks had been long since erected. . . The circumstances of the country, coupled with the general state of affairs, rendered it advisable to provide barracks in other parts of the kingdom. A spirit had appeared in some of the manufacturing towns which made it necessary that troops should be kept near them. In these towns, then, to dispose of the troops in barracks, was a plan far better than to distribute them among the mass of the people, where jealousy might rankle into hatred, and produce tumult and disturbance. It would also operate as a preventive of the seduction of the Army, who were by certain persons considered as the chief obstacle to the execution of their designs." The motion was negatived without a division.

9. The subject was not, however, permitted to pass without further challenge,[1] and General Smith, in April, 1796, moved in the Commons—"That it be referred to a Committee to examine into the expenditure of public money, in the construction and furnishing of barracks since the year 1790; as also to investigate by what authority such an expense, amounting to upwards of 1,000,000*l.* sterling, has been incurred."

A.D. 1796. Debate on General Smith's motion for inquiry.

10. The motion was opposed by Mr. Windham,[2] "as, on the fullest investigation, he was confident that nothing would appear but *economy* and *good management*." Speaking in favour of the resolution, Mr. Fox objected that Parliament had not been fairly treated: "The Constitution says, that money shall not be raised without the consent of Parliament. Has that not been done in the present instance? When the question of barracks was under the contemplation of Government, should it not have been brought before Parliament, and not merely be laid before them for their approbation, after the expense has been incurred? . . . . The plan has avowedly been long in agitation, but

Economy of the arrangements.

Parliament unfairly used.

[1] 32 Parl. Hist., p. 931. [2] Ib., pp. 929, 940.



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Ministers have never thought proper to bring it regularly before the House. They have, on the contrary, incurred all the expense, and gone on in the prosecution of an extensive system, not only without the authority, but in the absolute defiance of Parliament." "Mr. Windham," continued Mr. Fox,[1] and the remark is pertinent to the sequel of the case, "has appealed to the honour of the gentleman at the head of that department, the Barrackmaster-General, for the propriety and economy of the manner in which the business is conducted. Does he not recollect, that to pledge a man's honour is not the most honourable mode of accounting? and that to such a man it may be answered, 'I have no intention of disputing the point of honour, but I want to know what you have done with the money?' For these different reasons, I exceedingly approve of appointing a Committee of Inquiry; and if it be resisted, I do say, however liable I may make myself to invidious observations, that we have but a mockery of a Constitution. If Ministers disregard all fundamental principles,—if this House calmly tolerate their excesses,—if the power of raising and applying money be exercised, not by the House of Commons, but the King's Ministers, what is our Constitution, but a farce and a mockery?"

Economy vouched by Mr. Pitt.

11. It is evident from Mr. Pitt's speech,[2] in which he justified the Barrackmaster-General's department on the ground of its *economy* in the expenditure of public money, that the Treasury were as ignorant as the Secretary at War (Mr. Windham) appeared to be of the expenditure then going on under his control.

History of Barrackmaster-General's establishment.

12. The Barrackmaster-General's establishment is an unfortunate episode in Army administration, and might be passed over in silence but for the possibility, in the absence of such information as the history of the department affords, that the same errors may be repeated. The origin of the scheme is told by the principal actor himself; for when that officer was called upon to render an account of the public money entrusted to him, he hoped to avoid this request by an explanation of the manner of his appointment.

[1] 32 Parl. Hist., p. 942.

[2] Ib., p. 943

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13. "In the month of June, 1792[1] (being then Deputy Adjutant-General), I was directed to attend at the house of Mr. Dundas (now Lord Melville), at Wimbledon, where I found Mr. Pitt, Sir George Yonge, and several other persons; the conversation was on the subject of erecting barracks in different parts of England, which it was necessary should be executed with the utmost dispatch, and I was particularly desired to undertake this service; and being perfectly convinced from the situation of the country (with which I had been enabled to make myself intimately acquainted) of the necessity of the measure, and that it would not admit of delay, I next day arranged with the Secretary at War the mode of proceeding: and as no circumstance whatsoever would have induced me to entertain the idea of becoming a public accountant, it was settled that all payments should be made by the officers commanding the troops on the spot, giving drafts on their respective agents for the amount of the demands of the tradesmen employed; this circumstance I communicated personally to Mr. Pitt, who approved thereof, as the best and most simple mode of proceeding; I therefore undertook the service under the express stipulation that I was not to become a public accountant. The great advantage arising from the mode of establishing barracks throughout the kingdom having become evident, and it being necessary to put all matters relative thereto on a regular footing, a Warrant was issued in the year 1793 by the King, for the regulation thereof, and I was appointed, in addition to my situation of Deputy Adjutant-General, to be Superintendent-General of those barracks, and all matters relative thereto, under the immediate direction of the War Office."

Origin of the plan.

14. Obviously it was intended that the Barrackmaster-General should act in subordination to the Secretary at War, but whether his allegiance and duty were to be those of a *military* officer to the King, as the supreme head of the Army, or of an *administrative and financial agent* to the King, as the head of the civil Government acting

Responsibility of Barrackmaster-General, to whom?

[1] 1st Report (1806), p. 96. Throughout this Chapter I have given the principal facts and their explanation in the words of the Barrackmaster-General.

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through the Treasury and responsible ministers, appears never to have been understood, or, at least, admitted by him. As he held his commission from the King, and a Letter of Service from the Secretary at War, the direct control of the Treasury never appears to have been exercised until the affairs of the department had become involved in hopeless embarrassment.[1]

Business was in its nature civil, not military.

15. Perhaps no business could be more purely civil than the acquisition of land and the erection thereon of buildings for barrack purposes. Given the town or place where troops were to be quartered, it was left to the Barrackmaster-General to acquire *there* such a site as *any* landowner was willing to sell or lease (for barracks were erected in some instances on leasehold premises held for short terms) for the barrack service. No land agent or surveyor appears to have been employed in these negotiations, but purchases were made solely on the *judgment* of the Barrackmaster-General. Of course in many instances they were made on terms highly prejudicial to the public. The building operations were not carried on under the superintendence of the Royal Engineers, or of any competent staff of civil architects, but under the Barrackmaster-General and his officers (three of the latter being surveyors), and therefore these contracts were as ruinous to the public as the land purchases.[2]

Purchase of land.

Building thereon.

Barrack furniture to be purchased and repaired.

16. Upon completion the barracks had to be kept in repair, to be furnished with bedding, utensils, &c., and—when occupied by the troops—to be supplied with coals, candles, &c. These were matters of contract and commercial dealing, and as the Barrackmaster-General (by his previous professional employment) could have no experience in such transactions, they were conducted to the advantage of those who *furnished* the supplies, rather than to the public who *paid* for them.

Personal defalcations.

17. When to the foregoing facts it is added that upon the resignation of the Barrackmaster-General in November, 1804,[3] it was found that upwards of 9,000,000*l.* of public money had been issued to him—of which he

[1] 4th Report, 1806, pp. 116-119, 165, 195. [2] Ibid., pp. 122, 137, 141, 145, 195.
[3] 1st Rep., 1806, pp. 4, 8, 10.

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had drawn for his *own* use 135,128*l.* 13*s.* 8*d.*,—and that no accurate account could be given or had been preserved, of either public or private expenditure, a fair outline has been presented of the financial results of this scheme, improvised to supersede the Ordnance Department, and to work without the Parliamentary responsibility that attaches to an established Department of the State.

18. The objects to be attained were (as it is usual to profess in all new appointments) efficiency and saving of public money by the absorption and consolidation of the duties of other offices; in a word, to substitute *one irresponsible officer* for several *responsible members* of the Legislature. "In the office of Barrackmaster-General[1] are combined duties that were before performed by various departments, so that the troops in barracks had to look to different officers for the several supplies necessary for their use, and frequently, from want of knowledge of official distinctions, were deprived of many comforts and necessary conveniences, and were subject to difficulties and delays, which they are not liable to experience under a person appointed expressly for the immediate care of their accommodation, disposition, and supply." Objects of the appointment.

19. Their supplies were to be of "good and sufficient quality," and to be "provided on the *best* and most reasonable terms;" "no *frauds* were to be committed, or any advantage to be taken under the pretence of fees, perquisites, gratuities, or *emoluments*, or any act performed or done injurious to the public interest, but all money appropriated for the service of the Barrack Department, for which the Barrackmaster-General is responsible, was to be paid, without any deduction whatsoever, directly by the person receiving it from the public Treasury, into the hands of the persons performing the services." Better supplies, and no frauds.

20. In 1797 a statement of the "Establishment" and of the emoluments of the Barrackmaster-General and of each person employed, was laid by him before the Finance Committee of that year. "*His* emoluments, fixed by the *King*" (*all* others by the *Secretary at War*), "had risen to 40*s.* per diem Establishment in 1797.

[1] Statement of Barrackmaster-General in 20th Rep. of F. C., p. 410.

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on the establishment, and 40*s.* extra, with his *actual* expenses for *contingencies* and on account of travelling; but *no fees or emoluments whatever* (and these words were repeated after each person's salary) on the receipt or issue of the public money."

All appointments and emoluments made by Barrackmaster-General.

21. As he admitted himself to be responsible for all the subordinate officers (but what the public gained by the admission was not apparent), *he* claimed to appoint and *remunerate* them with the sanction of the Secretary at War, but without the concurrence of the Treasury. "The officers appointed immediately under the Barrackmaster-General,[1] being for the purpose of assisting *him* to execute the various duties entrusted to him, and he being *responsible* for their conduct, as well as *for the moneys* and stores entrusted to them, it will of course appear just that the nomination should proceed from him personally; the number also, which must depend on the state of the business of the Department, must be increased or diminished according to *his suggestion*, he being responsible for the just and *necessary expenditure* of the money *imprested* to him; but the control of the whole Department, with regard to appointments, as well as expenditure, is vested in the Secretary at War, and no charge can be allowed without his sanction."

Report of Finance Committee, 1797.

22. The Finance Committee reported[2] the Department as standing upon a very *large* and extensive establishment (the salaries and extra pay of the officers amounting in 1796 to 9524*l.* 17*s.* 2*d.*); but as the Barrackmaster-General had stated "that it was his invariable practice to oppose the idea that as it then stood it was to be considered as a settled establishment,"[3] they forbore to make any recommendation as to any reduction of the various appointments laid before them.

Error in the principle of the establishment.

Secretary at War substituted for the Treasury.

23. These were the duties entrusted to, and the powers claimed by, the Barrackmaster-General within the cognizance of Parliament when the Finance Committee laid their report on the table of the House of Commons in July, 1797. The attempt to set up the Secretary at War as a financial check in place of the Treasury

[1] Statement of Barrackmaster-General in 20th Rep. of F. C., p. 413.
[2] July, 1797. [3] Statement, &c., p. 410.

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proved to be futile. That officer was not in the Cabinet; in all matters of finance was wholly subordinate to the Treasury, and without any Original or Independent function in regard to the custody or audit of public moneys required for Barrack buildings.

24. But there were existing at that time His Majesty's Commissioners for the audit of public accounts, who held a statutory authority under the 25 Geo. III. c. 52, for the examination of the accounts of all imprest accountants, to whom money voted by Parliament had been entrusted. Therefore, to ignore these public functionaries under the pretext of an *agreement* by the Barrackmaster-General with the *King*, that they should not examine his accounts, was a doctrine so extravagant, that it could not receive sanction from any Constitutional Minister responsible to Parliament for the expenditure of public money.

Audit Commissioners ignored.

25. The first controversy that appears to have arisen originated between the Barrackmster-General and the Secretary at War on matters of account. In 1795, the Barrack-master-General having delivered in his accounts for the years 1792-3, and to 24th June, 1794, the Secretary at War surcharged him therein with all the money, amounting to 48,661*l.* 7*s.* 6*d.*, spent on barracks in the year 1792, through the *agency* of the *commanding officers of cavalry*, and subsequently declined to make any *final* audit of the Barrack-master-General's accounts.

Controversy with Secretary at War.

26. Unfortunately, from circumstances, and especially the last, it happened that the Barrackmaster-General was suffered to act in matters of *finance* without ministerial supervision or control of any kind, and as a natural sequence, great irregularities of conduct were brought to light when the Commissioners of Military Enquiry, appointed by 45 Geo. III., c. 47, examined into, and reported upon, the affairs of the Department.[1]

No control over Barrack-master-General.

27. It is impossible to read the Commissioners' Reports without a conviction that the great abuses originated (independently of the personal character of the officer) in the system which it was then attempted to inaugurate — utterly at variance with the principles

A.D. 1806. — Reports of Committees on Military Inquiry.

[1] 4th Rep., 1806, p. 193.

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that regulate the "Civil Administration of the Army." A military officer taken from the Executive Department of the Army was employed to frame estimates and expend public money under the *nominal* supervision and control of the Minister, who was to submit these estimates to Parliament. The control was so weak that it was practically useless, and as a consequence, all efficient check upon this officer's expenditure of public money was lost.

Controversy with the Auditors of Public Affairs.

28. It was easy for him to mistake his position; to consider himself "in all respects with regard to the Barrack Department what the Secretary at War was to the army at large," for—he was commissioned by the King, and he had obeyed the Commander-in-Chief—what right had the Auditors of public moneys to question the propriety of his expenditure? He would rather bear the supreme punishment —not of Parliamentary impeachment or civil trial, which are the real securities that the public are entitled to, but—"of *censure* of a *Military Court for neglect of duty* in his *official* capacity," than accept such responsibility. He *alone* could judge of the fairness of the expenditure on his department, and, therefore, no Auditor or other public servant ought to open up his accounts. "The only circumstance, therefore, to which the operation of the Auditors would go would be to inaccuracies in calculations, which might arise from the want of sufficient attention in subordinate persons in the office, it being evidently impossible that such minute parts of the business could be executed personally by the Barrackmaster-General; and thus, for the possibility of discovering, after a very laborious examination having taken place in the Barrack Office, an error of a trifling nature, a very considerable portion of the valuable time of the officers and clerks of the Auditors' Office must be wasted, when, by a more *liberal* examination upon some general principles, the accounts might be settled without delay, and the public interest be *equally* well guarded."[1]

Accountant urges the circumstances of

29. Whenever the Auditors entered upon their duties, the Barrackmaster-General, instead of producing and vouching his accounts, made a statement of "the cir-

[1] Barrackmaster's Statement in 4th Rep., 1806, p. 86.

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cumstances of his appointment as necessary to them to form a just opinion on the matters about to be brought before them,"[1] contending that he had a most solemn compact with the Monarch that his accounts should not be examined—suggestions obviously made to deter the Auditors from entering upon their public duties, the discharge of which were, as the accounting party would have had it believed, not only useless to the public but *offensive* to the Sovereign. his appointment.

30. The Reports of the Commissioners of Military Inquiry enable any reader who is anxious to follow out the results of the scheme, to see (1) what success attended it, (2) and the possible consequences of abandoning, as some desire, all financial control over the expenditure made by executive officers of the Army. Results of the appointment.

31. I. As to the supplies which were to be "good and in sufficient quality," and to be "provided on the best and most reasonable terms." To effect this object, in December, 1794, the Barrackmaster-General did what any person *totally* ignorant of all commercial dealings would do,[2] viz.: he agreed with *one* person (A. Davison) to take the whole matter off his hands, and save him from "all trouble and disappointment in the business;" but he did not make any effectual stipulation to protect the public from extravagance either in the price, quality, or quantity of the supply, or even in the issue of public money to this monopolist.[3] As to supplies.

32. II. As to the profession "that no frauds were to be committed, or any advantage taken under pretence of perquisites or emoluments," the accounts of the Barrackmaster-General show that he took a "liberal" view of his legitimate rights and privileges.[4] Under the head As to prevention of frauds.

[1] Barrackmaster's Statement in 4th Rep., 1806, p. 6. [2] 3rd Rep., p. 8.

[3] See Annual Register, vol. l., p. 133, for the trial of this person, and vol. li., p. 135, for the sentence of twenty-one months' imprisonment in Newgate upon him. As to the previous incidents of his life, see vol. xlv., p. 119; vol. xlvi., p. 383; vol. xlix., p. 102, note; vol. li., p. 102, note. The defence was conducted upon the Barrackmaster-General's theory that it must be supposed to be impossible for a person in such high society to commit a fraud. [4] 1st Rep., p. 88.

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of "contingencies," he introduced into his first account, rendered in 1795[1] (before any disallowances were suggested), a charge of 1*l.* 1*s.* per cent. to cover disallowances on all expenditure, which amounted to a total sum of 88,943*l.* on his final accounts.

Departmental or contingent expenses.

33. III. As a "contingent office" expense,[2] he purchased a personal residence, and furnished it at the cost of 8000*l.*, supplying himself with coals and candles at the public cost.[3] His travelling expenses (6032*l.* for eight years) were such as to call for remark from the Commissioners, who added that there were "no vouchers for these expenses, nor any detailed account of them in the Barrack Office." His salary had been increased to 8*l.* a day (part of which had been twice charged), and a pension of 6*l.* a day was granted to him for life out of the Barrack Expenditure on retirement from his appointment in 1804.

Establishment increased.

34. IV. As might be expected from his experience, the establishment charges *largely* increased,[4] viz., in the eight years (1796 to 1804), from 27,991*l.* 16*s.* 6*d.* to 74,000*l.*, and—which could scarcely have been expected—viz., Barrackmasters were appointed to places where no barracks existed.

Total amount unaccounted for, 10,000,000*l.*

35. One of the last traces of this discreditable transaction in the Parliamentary Papers is to be found in the Report of the Finance Commissioners of 1811. In March, 1807, two Commissioners (appointed under the provisions of 47 Geo. III. c. 13, specially passed for this one object) began to examine the only accounts ever delivered by the Barrackmaster-General, viz., those up to 1795. When the Commissioners reported, they had gone through such statements of cash as had been found—and to make the result clear to themselves, and afterwards intelligible to others—had reduced the Barrackmaster-General's pecuniary transactions with the Secretary at War to the form of *merchants' accounts*[5] (such

[1] 1st Rep., p. 10. [2] 2nd Rep. p. 138. [3] Ib., p. 201.
[4] Ib., p. 142. [5] 1811, June 26, No. 250, p. 7.

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as is "in use in every commercial country in Europe"); but the *final* accounts of his expenditure of 10,000,000*l.*, and of his personal defalcations, had not then been completed.

36. In looking back at these transactions, it is impossible to do more than conjecture what could have been the real motive of suddenly improvising such a staff of inexperienced persons to carry out such an important undertaking. If the object was to withdraw a large expenditure from the control of Parliament, by placing it in the hands of persons holding commissions from the Sovereign — and ignoring the authority of Parliament — or of persons unskilled in public affairs, ignorant of pecuniary or Parliamentary responsibility, untrained in the constitutional traditions of a large public department, and knowing only the rule of implicit obedience to a military superior, then the plan succeeded, at the cost of a vast waste of public money.[1]

Reasons for the appointment of Barrack Department.

Official responsibility.

37. When a department of the State, and all the public servants under it, are deliberately set aside, and their duties handed over to novices, the motive—whatever be its character—must be great and overpowering; for though the result of such an experiment *may* be successful, yet if failure or waste ensues, the scandal of these consequences is rather to be borne by the authors than by the subordinate agents of the scheme, who, if honest, may have done their best to discharge the untried duties which they have been engaged to fulfil. In this instance, anything more reckless than the expenditure cannot be conceived, or more wanting in official guarantees for the propriety of it. Thus, in one instance, a barrack for one thousand men was *ordered* by the Commander-in-Chief, and sanctioned by the Secretary at War on the same day, *verbally;* and in another an expenditure of 88,000*l.* was immediately entered upon, with the *order*[2] of the Commander-in-Chief, but without even the *verbal* sanction of the Secretary at War. But how could an inferior military officer hesitate to obey such a command, or—being under the Mutiny Act—be blamed for doing so?

Expenditure reckless and unauthorised.

[1] See further, 51 Com. Journ., p. 559; 7 H. D. (O. S.), pp. 237, 293, 1190, 1252; 8 ib., pp. 559, 843; 9 ib., p. 425.

[2] 4th Rep., p. 117.

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38. It is scarcely possible to doubt but that the Ordnance Department was put aside advisedly, to let in the power of the Commander-in-Chief, because the constitution of the Board interposed too many checks and safeguards in the expenditure of public money. Under the Ordnance Board such scandals would have been impossible, or possible only upon such a dereliction of prescribed duty as would have rendered the Board officers and their inferiors liable to punishment—to Parliamentary impeachment and Criminal prosecution. That Board acted under the Treasury for finance, and the Secretary of State for executive duties; and hence their action needed the sanction of the highest ministerial officers of the Realm. Men of that calibre would have hesitated before they sanctioned acts that might — as those of the Barrackmaster-General did—become the subject of public reprobation and Parliamentary censure; whether they would, on the order of any Commander-in-Chief, have raised 203 barracks for 17,000 cavalry and 146,000 infantry, in direct violation of public feeling expressed so strongly in Parliament against barracks,[1] some persons may think to be more than doubtful.

Board of Ordnance a constitutional safeguard.

39. It may be said that the same thing can never happen again, because the Army Extraordinaries are abolished; but it must be remembered that the Ordnance and other departments are absorbed into one office, and that *all* Military expenditure is under the superintendence of *one* Minister. There is nothing to prevent that minister from changing his employés from Civil Servants to Military Officers—from so redistributing their duties that the Parliamentary safeguard of an established office and of experienced departmental officers may be weakened or lost, or from changing the Home for the Foreign and Colonial system of Army administration without the full knowledge or previous sanction of Parliament. If such an experiment should be attempted—the probable consequences of it having been foretold by the circumstances of the Barrack Department—no palliative, so long as our Parliamentary records are preserved, will be admitted.

Recurrence, and disasters.

40. To remedy the evils then rampant, the Commissioners,

[1] 2nd Rep., p. 143.

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in their 4th Report, wrote thus:—"Although it seems to have been invariably in the view of the late Barrack-master-General to have the barrack *officers and concerns* considered as purely *military*, we are not inclined to coincide with him in the propriety of that idea. We view the duties and concerns of the Barrack Department as partaking more of a *civil* than of a military nature, nor do we see any disadvantages likely to follow their being considered as such; on the contrary, *considerable benefits*, we think, would arise from the Department being classed amongst the *civil* establishments, and some of these would be experienced in the regulation of salaries; for we think that the consequence of considering it as a military department has been to introduce a mode of pay and allowances not otherwise justifiable, and which does not afford the same means of gradual remuneration which can be derived from the allowance of salaries; it *confounds* the *distinction* between those actually in the *military* service, and those whose duties are more properly of a *civil* nature. And these duties, consisting of the superintendence of the erection and repairs of buildings, the *providing of stores*, and the keeping of very complicated *accounts*, certainly do *not* appear to us to be such as the *previous habits and knowledge* of *military* men best qualify them to execute."

Remedy: establishment changed from military to civil.

41. Accordingly, all the contracts for supplies were *at once* transferred from the Barrackmaster-General to the Treasury (acting through a civil servant, the Commissary-General), and the general affairs of the Barrack Department were placed under Civil Commissioners appointed by the Crown, and acting under the direct control of the Treasury. More than this,—the Treasury placed on record this plain and deliberate decision[1] as to the cause of the evils that had resulted to the public service:—

Acting under the Treasury.

42. "Upon *mature deliberation* my Lords are of opinion that the *principal* part, if not the *whole*, of the *evils* and inconveniences attending the present establishment of the Barrack Deparment, have arisen from all the *officers* in the Department having been considered as forming a part of the

Cause of the evils stated.

[1] Treasury Minute, March 10, 1807.

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*military staff of the army*, with military pay and allowances; circumstances which must be considered as naturally tending to make the principal officers of the Barrack Department feel themselves *less dependent on the Board of Treasury* than is consistent with the necessary and regular superintendence which it is the duty of this Board to exercise over every department charged with so *large a part of the public expenditure.*

Remedy for them.

43. "My Lords, therefore, feel it their duty to recommend to His Majesty that the Barrack Department be *entirely and exclusively a civil establishment, free from all military control whatever;* and that no appointments take place, or commissions be granted, but upon the recommendation or appointment of the Board of Treasury.

Abolition of Barrackmaster-General's Department and the appointment of of Commissioners acting under the Treasury.

44. "They are also of opinion that it will be expedient to adopt the suggestion of the Commissioners of Military Inquiry, by abolishing the offices of Barrackmaster-General, Deputy-Barrackmaster-General, and one Principal-Assistant Barrackmaster-General, and by appointing a Board for conducting the affairs of the Barrack Department, consisting of three Commissioners, of whom one should always be an officer of Engineers, and a secretary; but in order to obviate the inconvenience arising from a divided authority, and from the want of a responsible accountant, my Lords are of opinion that the First Commissioner should enjoy a higher authority than the other two, and should alone be charged with the receipts and issues of the public moneys, and be the sole accountant for the same at the Audit Office.

Subsequent history.

45. The subsequent history of the Barrack Department, up to the date of its being handed over to the Ordnance Board, is very simple. A Board of Commissioners, and afterwards (upon the abolition of the Board, in 1817), a comptroller of the Barrack Department managed all the barracks until, in 1822, both in England and Ireland, all the barracks were handed over to the Ordnance Department, placed under the management of the Secretary, and this system continued until the year 1856.

Statutes relating to Barrack Department.

46. It remains to notice (1) the statutes that have been passed or are now in operation, with reference to the Barrack Establishment.

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47. With regard to the statutory powers having reference to the Barrack Department, and the acquisition of barrack sites, it may be observed that the first statute that conferred upon the Crown general powers (though limited in duration to the war then existing) for the compulsory taking of land for ordnance or other public purposes in England or Scotland, was the 38 Geo. III., c. 27, passed under the apprehension of the French invasion. This Act expired with the Peace of Amiens, but was renewed on the breaking out of hostilities, by the 43 Geo. III., c. 55, which continued in force till the year 1814. By it power was conferred on the Crown to authorize any General officer to survey and mark out any piece of ground wanted for the public service, and to treat with the owner for the possession or use thereof during such time as the exigence of the public service should require. In case no agreement was made, a jury assessed the compensation to be paid, but (until an enemy was actually invading the kingdom) no land could be taken from an owner adversely, unless the necessity for taking the same should be first certified by the Lord-Lieutenant or two Deputy-Lieutenants.

Statutory powers for barrack purposes in Great Britain.

48. This Act did not contain any provisions as to the conveyance of the lands to the Crown, or to any one in trust for the Crown; and it could scarcely have been intended to provide for more than the temporary occupation or use of land taken under the Act. However, it was the only statutory sanction that could be urged in favour[1] of the Barrackmaster-General's course of proceeding, and several barrack sites appear to have been acquired under it.

Temporary occupation only.

49. Whatever lands and premises had been purchased by the Barrackmaster-General appear to have been conveyed to him "and his successors,"—though obviously such terms were inapplicable,—it became, therefore, necessary to apply to Parliament for an Act (43 Geo. III., c. 69), declaring the Barrackmaster to be a *quasi* corporation, and that all premises acquired out of public moneys for barrack purposes should devolve on the Barrackmaster-General for the time being, and be held in trust for His Majesty, his heirs, and successors.

A.D. 1806. Vested in Barrackmaster-General.

[1] 4th Rep. (1806), p. 124.



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50. The operation of this Act was not of long duration, for so soon as the character of the Barrack Department was changed, and the affairs placed under the management of Commissioners, all the estates were by the 48 Geo. III., c. 122, vested in the Commissioners and their successors with powers of sale (with the assent of the Treasury), and of bringing and defending actions in relation to the Barrack Department.

A.D. 1808. Transferred to Commissioners of Barracks.

51. After the management had been placed in the hands of a "Comptroller of the Barrack Department" in lieu of the Commissioners, an Act was necessary to transfer the estates to the Comptroller, and as all compulsory powers of purchase had expired, certain enabling powers were given[1]—to persons under disability—to facilitate voluntary agreements for the sale of lands to the Comptroller; but no powers for the compulsory taking of land were conferred upon him.

A.D. 1817. Transferred to Comptroller.

52. When in 1822 all the barracks in England, Ireland, and the Colonies, were handed over to the custody and care of the Board of Ordnance, an Act[2] was passed to vest all the barrack sites in the United Kingdom in the principal officers of the Board, and the legal title in these estates—passing by the various Acts of Parliament that have been cited—became united in this one department.

A.D. 1822.

53. It would answer no useful purpose to trace in detail the various Acts subsequently passed to vest the same property in Her Majesty's Principal Secretary of State for the War Department,[3] and it is sufficient to notice one important point in connection with the subject of this Chapter, viz., that in fortress or garrison towns *only*, or on sites appurtenant to fortifications, can land be taken compulsorily for barrack purposes. Barracks, no doubt, are an annoyance to a neighbourhood, and this restriction is not unreasonable.

[1] 9 Geo. III., c. 57.
[2] 3 Geo. III., c. 108.
[3] 5 Geo. IV., c. 26; 2 Wm. IV., c. 25; 5 & 6 Vic., c. 95; 18 & 19 Vic., c. 117; 22 Vic., c. 12.

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# CHAPTER XIII.

## ON THE INCREASE IN NUMBERS OF THE STANDING ARMY.[1]

1. THE erection of barracks in the manner pointed out in the last Chapter removed the greatest impediment that had previously existed to the permanent establishment of a Standing Army in this kingdom. At periods anterior to the year 1792 the Ministers of the Crown were obliged to reduce the Army to a Peace establishment, *immediately* that its actual services in War were no longer needed. The people would not endure the grievance of billets, but after the erection of barracks Mr. Pulteney's prediction of 1741 was fulfilled, the people were less sensible of numbers, and a large Army has been maintained.

Erection of barracks facilitated the increase of the Standing Army.

2. Starting with the Resolutions of the House of Commons in December, 1698, the present Chapter will trace in outline the gradual increase of the Army until it has reached the numbers given on the authority of Annual publication of the Secretary of State for the War Department.[2]

Progress of the Standing Army from 1698.

3. In the year 1696 the Estimate laid before the Commons[3] shows (though it does not state the numbers) that a large force of Foreign and Native troops—largely in excess of the ordinary Peace Establishment—was employed. Upon the Peace happening they were immediately disbanded, for when these Resolutions were passed there were on the English Establishment only 14,834 men, and on the Establishment for the Plantations and Abroad only 1258 men—the Irish Establishment having on it 15,488 men. The resolutions which the Commons passed on the 17th and 19th December, 1698, were in these words:—"1st.[4] That

A.D. 1698.

Resolutions of the Commons on reductions.

[1] Appendix, Note M.

[2] Appendix LXIX., extract from 'Strength, &c., of the Army of Great Britain,' by Captain Petrie, 1867-8. [3] 11 Com. Journ., p. 611. [4] 12 ib., p. 359.



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all the land forces *in* the kingdom of England in English pay, exceeding 7000 men (commissioned and non-commissioned officers included) be forthwith paid and disbanded. 2nd.[1] That all the forces in Ireland exceeding 12,000 men (commissioned and non-commissioned officers included) be forthwith disbanded, and that such forces as shall be kept in Ireland shall be maintained by the kingdom of Ireland.

4. The House further resolved that the forces of England should be English-born, and of Ireland natural-born subjects of His Majesty, and the form in which these Resolutions were drawn gave a distinct limitation both to the distribution and use of these troops.

Limitations imposed by Parliament.

5. The War that quickly succeeded this reduction obliged Great Britain to re-engage a vast host, and these were of Foreign rather than Native troops. In the year 1711 the total amounted to 201,000 men.[2] Then came the Peace of Utrecht; and the Secretary at War on the 27th May, 1713, laid his (first) estimate before the Commons, of His Majesty's forces in the Plantations — Minorca, Gibraltar, and Dunkirk—showing 11,125 men to be in pay there. Upon the following day he was *ordered* by the House to lay before them an Estimate[3] *of eight thousand* men to be "allowed for Guards and Garrisons in Great Britain, and for Guernsey and Jersey."[4] This (second) Estimate was prepared by the Secretary at War and adopted by Parliament.

Augmentation and reduction in 1713.

After the Peace two estimates submitted—(1) for troops in the Plantations and abroad; (2) for guards and garrisons at home.

6. The Mutiny Act then limited the force to 8000 men for a "Guard to His Majesty's person, and the safety of this kingdom;" but the number of troops in the first Estimate was not mentioned in the Act, other than as "a certain number of troops for the defence of His Majesty's dominions beyond the seas."

Mutiny Act declared the number of troops to be employed in Great Britain. Separate estimate for many years adopted, and the forces voted for distinct establishments.

[1] 12 Com. Journ., p. 360. This Standing Army in Ireland was established by a Permanent Statute (3 Wm. III., c. 1, s. 45), and it was increased to 15,234 men by the 8 Geo. III., c. 13, which was in force at the Union.

[2] 17 Com. Journ., pp. 65-312, and 33 H. D. (O. S.), p. 96.

[3] 11 Com. Journ., pp. 382, 383.

[4] 12 Anne, c. 13.

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7. No doubt the speedy reduction of the Military forces of the Crown in these instances that have been given, and indeed in all others till the commencement of the present century, was greatly facilitated by the employment of foreigners upon the Continent, to fight under William III., the Duke of Marlborough, or other English generals sent out with a small body of British troops. In the first place, the people here would not volunteer for foreign service, and their unwillingness to become soldiers proved, in effect, to be a security for our National freedom. When the war had come to an end, there was not, as at the termination of the Peninsular and Crimean Wars, a large mass of soldiers either to keep in arms or to absorb in the civil population, but this evil had to be borne by the European States of whom they were the Subjects.

Foreigners in the military service facilitated the speedy reduction of the Army.

8. One other remark also presents itself to notice, which is, that it is plain that the mode of Parliamentary Procedure adopted in 1714 gave a security that at the present time does not exist against the indefinite strength of the Standing Army within the kingdom. The separate establishments and the distinct declaration in the Mutiny Act of the number of men that were to be retained in Great Britain, as distinguished from those that were to be employed elsewhere—were guarantees, so far as Parliament alone could make them such, that the troops should be used *only* for the purpose for which they were voted. How far a Minister would, under such circumstances, have been held responsible to Parliament, had he, for some unconstitutional purpose, countersigned a royal order to alter these arrangements by bringing home all the troops voted for foreign or colonial service, was never raised; but the protection which these arrangements afforded has long since disappeared; only one Estimate, but no separate Establishment of the Army, is given. All the forces are voted in one total, leaving the Crown with a discretion to use the whole force *where* and as the Ministry for the time being sees fit.

Constitutional security derived from the mode of Parliamentary procedure in 1713.

These Parliamentary proceedings afforded security against the Standing Army within the kingdom.

9. The principle of the Bill of Rights is thus practically disregarded, and the power of *the Crown* over the Army has become extended in a manner inconsistent with the statutory restrictions imposed upon it over

Security abandoned.

Power of Crown over

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Militia limited, over the Standing Army unlimited.

the Militia. Until either a state of war[1] with a foreign power, or actual invasion, or imminent danger thereof, or rebellion or insurrection exists, not a single regiment of Militia can be raised; but there is no such statutory restriction upon the use of the Standing Army, which may be brought home from Foreign stations, and concentrated at any moment by the Ministers of the Crown in either kingdom or any part of it.[2]

The number of the forces a constant source of controversy between the Crown and Parliament.

10. The struggle between the Crown and Parliament as to the description of the forces by whom the country should be defended, which commenced under the Stuarts, continued under the House of Hanover. The Navy and the Militia, supplemented as now by Volunteer train-bands, were the Constitutional forces which Parliament encouraged, and rarely, if ever, objected to increase. "The Navy," said the late Duke of Wellington, speaking as Sir A. Wellesley,[3] in the House of Commons, "was the Characteristic and Constitutional force of Britain, but the Army was a new force arising out of the extraordinary exigencies of modern times." The Army has never been looked upon as a Constitutional force, and therefore throughout the last century it was the occasion of an annual contest between the Ministers of the Crown and Parliament, when the numbers were voted and the Mutiny Bill was proposed.

11. The jealousy of the people, as they were represented in

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[1] 42 Geo. III, c. 90, sect. 111; 17 & 18 Vict., c. 13, sect. 1; 22 & 23 Vict., c. 38, sect. 1.

[2] The Mutiny Act, until the year 1811 (51 Geo. III., c. 8), kept up an appropriation of the Forces to particular services. In 1726, the 13 Geo. I. made a distinct enumeration of the Force in England and Scotland, which continued to be the practice till 1789, when the 13 Geo. II. stated the probability of an increase in the course of the year (see also Mutiny Act of 29 Geo. II.). On reduction—the force being declared by the Preamble for the year—a statement was introduced to explain that troops in excess were about to return home, and would on their return be broke; and this form was used in the Mutiny Act for many years. (See 1762, Mutiny Act of 3 Geo. III., and Mutiny Act of 23 Geo. III., c. 17, 52, to Mutiny Act of 39 & 40 Geo. III., c. 27. Then compare Mutiny Act 43 Geo. III., c. 20, and 51 Geo. III., c. 8).

[3] 11 H. D. (O. S.), p. 815.

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Parliament,[1] arose against the Army mainly from two facts, (1) that standing Armies were the characteristics of Continental States, and (2) that the political condition of those States varied from the political condition of England by the absence of that freedom in speech and action which every Englishman claims as his birthright. Why, therefore, should Parliament both hazard the loss of these benefits and exhaust the national treasure by maintaining a Standing Army as a defence *at home*, when the Navy, as the first, and the Militia as the second line of defence, were not shown to be unable to secure our shores from invaders. The weight of these objections no Minister could fail to recognise, and they found expression in Parliament when Mr. Pitt's fortification scheme of 1786[2] was thrown out by the casting vote of the Speaker.

Grounds of jealousy against the army.

12. The first augmentation in the reign of George I. was —as distinguished from the forces abroad—to the guards and garrisons in Great Britain,[3] consisting of 4000 men in addition to 14,294 men. The conspiracy against the King's life was the alleged reason for the increase, and the duration of it was to be for *one* year. Some Peers, however, opposed the augmentation after the Commons had sanctioned it, and they placed a protest on the Lords' Journals.[4] In the succeeding year the reduction of this 4000 men was moved in the Lords,[5] and again in 1725 in the Commons,[6] but it was never made. The last Estimate submitted in the reign of George I. was for 18,226 men, besides an augmentation of 8286 men to the guards and garrisons of Great Britain.[7]

Augmentation in Geo. I.'s reign.

13. During the reign of George II. the augmentations were numerous, and different arms or branches of the service formed.

The augmentations in George II.'s reign.

[1] See Lords' Protest, 1723; 8 Parl. Hist., p. 61. [2] 25 H. D., p. 1096.
[3] 20 Com. Journ., p. 40. [4] 20 Com. Journ., p. 154; 8 Parl. Hist., p. 61.
[5] Ib., p. 383. [6] Ib., p. 406; 20 Com. Journ., pp. 716-18.
[7] The debates against the Standing Army in this reign will be found in the Parliamentary History, as under:—7 Parl. Hist., 1717, Dec., pp. 505-14; 1720, Dec., p. 688; 8 Parl. Hist., 1723, p. 60; 1724, April, pp. 382-92, Nov., p. 406; 1726, Feb., p. 496; 1727, Jan., p. 547.

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Royal Marines.

The first to be noticed are the Marine regiments, though they do not form part of the total of the military forces referred to in a previous paragraph (2). The Origin of the corps of Marines has already been given, but the troops raised in Charles II.'s reign as part of the Army were disbanded with it.

Raised by Order in Council in 1694, and disbanded in 1697.

14. In the year 1694, by Order in Council of the 22nd February,[1] two regiments of Marines were raised, to be under the direction of the Admiralty, and under the command of the naval officers when afloat. Only one of the two regiments was ever to be on shore. While the Marines were afloat they were governed by the Navy Act, 13 Car. II., c. 29—on shore by the Mutiny Act of 8 & 9 William and Mary (c. 13, sec. 8),[2] and later Acts, until a Marine Mutiny Act was passed for their government. The establishment of these regiments was looked upon with great jealousy,[3] as being, in fact, an increase of the Standing Army: indeed, the House of Commons voted the supply on a resolution[4] "that they were to be employed in the service of the Navy *only*." Half-pay was granted to the officers by Council Order of 18th January, 1697.

Raised in 1702, and disbanded 1713.

15. In 1702 the 30th, 31st, and 32nd Regiments of the Line were formed, and served as Marine regiments. Their Establishment was under the charge of the Secretary at War, and they were governed by Orders of Queen Anne of the 1st of July, 1702.[5] On the Peace of Utrecht being proclaimed they were to be disbanded,[6] at the end of the year 1713.

Raised in 1739, and placed under the Admiralty.

16. In the year 1739[7] the Marine force was again established. It was provided for in the Army Estimates until the year 1745; and by Royal Warrant of the 28th February, 1746-7[8] (under the countersign of Chesterfield) the Lords of the Admiralty were directed to take the immediate and entire command of all the Marine Regiments

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[1] Vol. ii. of Admiralty Orders in Council, p. 554.
[2] Ive *v.* Ash, Prec. in Chancery, p. 199.
[3] Vol. ii. of State Tracts, p. 680.
[4] 12 Com. Journ., p. 152.
[5] Mis. Ord. Bk. (519), p. 191.
[6] 23 Com. Journ., p. 394.
[7] Ib., p. 426; 11 Parl. Hist., p. 150.
[8] Mis. Bk., p. 85.

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then raised, or thereafter to be raised, and to prepare and publish such rules and ordinances as were fit to be observed by them. At the Peace of Aix-la-Chapelle, in 1748, the force was totally disbanded.

Raised on their present establishment in 1755.

17. The Marine force, on the present Establishment under the Admiralty, dates from the year 1755. Commissions ceased to be purchasable,[1] and the officers now rise to command by seniority. A Mutiny Act—the 28 Geo. II., c. 11—was passed for their government *on land*, the Act[2] leaving them liable to the Navy Discipline Act while on board ship. When serving with the Army, they rank between the 49th and 50th Regiments of the Line, and by Royal Order of 29th April, 1802, they bear the style of the "Royal Marines." The corps is divided into Infantry and Artillery, the latter being formed under an Order in Council of the 18th August, 1804, by selection of the most intelligent and experienced men of the infantry. The total number of both arms, as fixed by Order in Council of the 22nd October, 1859,[3] was 16,986 men (including commissioned and non-commissioned officers), but it has been reduced by subsequent Orders in Council. The Statement of their number is not inserted in the Preamble of the Marine Mutiny Act.

The Ordnance Corps raised. Royal Engineers.

18. The Ordnance, or Scientific Corps of the Army, date as Military corps from this reign. In the Order in Council of the 25th of July, 1683, the duties of Engineers and Artillery are laid down with much exactness, and their number is shown in the Schedule attached to it. The Engineer-in-Chief was to be a person of considerable scientific attainments, to be skilled in all the principles of attack and defence, to be well versed in the strength and cost of material, and to be competent for the construction and superintendence of fortifications and works. His assistants were a Second and Third Engineer, and two ordinary Engineers or young men to be brought up in the art and practice of fortifications, &c.

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[1] Vol. ii. Orders of Admiralty, p. 557.
[2] Then 22 Geo. II., c. 33, but now 27 & 28 Vict., c. 119.
[3] The last Order in Council is 28 March, 1868.

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19. Subsequently the Engineers became part of the Military branch of the Ordnance Office, and an establishment of fifty Engineers was fixed by Order in Council of the 22nd August, 1717. The principal fortresses abroad were placed under the charge of three Engineers (a Chief, an Assistant, and a Practitioner), and smaller stations under one or two Engineers only.

A.D. 1717. Part of military branch of Ordnance.

20. In 1759 their Establishment was reformed on this basis:—

A.D. 1759. Reformed.

| | At per Diem. s. | d. | Per Annum each. £ | s. | d. | £ | s. | d. |
|---|---|---|---|---|---|---|---|---|
| 1 Chief | 27 | 6 | | | | 501 | 17 | 6 |
| 2 Directors | 20 | 0 | 365 | 0 | 0 | 730 | 0 | 0 |
| 4 Sub-Directors | 15 | 0 | 273 | 15 | 0 | 1095 | 0 | 0 |
| 12 In Ordinary | 10 | 0 | 182 | 10 | 0 | 2190 | 0 | 0 |
| 12 Extraordinary | 6 | 0 | 109 | 10 | 0 | 1314 | 0 | 0 |
| 14 Sub-Engineers | 4 | 8 | 85 | 3 | 4 | 1192 | 6 | 8 |
| 16 Practitioners | 3 | 8 | 66 | 18 | 4 | 1070 | 13 | 4 |
| 61 | | | | | | £8093 | 11 | 6 |

All the Engineer establishments at foreign stations were to cease, and extra pay was to be given when any one was performing Engineer services.

21. Their military rank, though not noticed on the Establishment of 1759, is said to bear date from the 14th May, 1757, and all Engineers subsequently entering the Ordnance Department were commissioned by the Sovereign on the submission of the Master or Lieutenant-General of the Ordnance.

A.D. 1757. Commissioned as officers.

22. The men and non-commissioned officers were first raised as such by the enlistment of the artificers in the employment of the Board of Ordnance in the year 1788. Out of these small beginnings the strength of the Royal Engineers has been raised (1868) to 74 officers and 4292 non-commissioned officers and men.

A.D. 1788. Men raised as privates.

23. The origin of the Royal Artillery is derived from the same source as the Royal Engineers. It will be seen from the Order in Council that at the date of it the Master Gunner of England was a person of considerably less importance than the Chief Engineer, though he had under

Royal Artillery.

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him three mates and 60 gunners. His duties were those of instruction in shooting, and to keep a register of the gunners, who generally lived near to the Tower of London, and followed any ordinary trade or handicraft that they might have been bred to.

24. In the wars of William III. and Queen Anne, the Dutch[1] found all the artillery and artillerymen for sieges; but after the Peace of Utrecht, when Gibraltar, Minorca, and other places came upon the charge of the Ordnance Department, a Military branch of the Ordnance, consisting of Engineers and Artillery, was brought into existence, and two companies of Gunners and Matrosses were raised under a Royal Warrant of 27th November, 1715, for the service of the Artillery in North Britain. In the following January, the Board proposed to the Duke of Marlborough (then Master-General) to reorganize the Military branch, and a Royal Warrant of the 26th May, 1716, countersigned by Stanhope, authorised a Regimental establishment for the Artillery.

Part of military branch of Ordnance.

A.D. 1715. — Two Companies raised.

25. The first estimate (that I trace) submitted to Parliament for the Royal Regiment of Artillery is in the year 1743, when 19,508*l.* 10*s.* 10*d.* was voted for the pay of the Royal Regiment of Artillery, augmented and formed into six companies pursuant to His Majesty's Warrant of the 7th March, 1742.

A.D. 1743. — Estimate for pay submitted to Parliament.

26. The officers were commissioned shortly before April, 1751,[2] as the Royal Warrant of that date, which gives them rank in the Army, refers to the fact that the King had *lately* been pleased to commission the officers. Their commissions were given by the Crown on the submission[3] of the Master or Lieutenant-General, who countersigned the same in place of the Secretary of State. In December of the same year, the same allowances in fuel, &c., were given them as were made to the Line. The strength of the Artillery for the year 1868 is a total of 1631 officers and of 26,687 men—one branch of the Army far larger than the

A.D. 1751. — Commissioned as officers.

[1] Historical Notes of the Ordnance, 1780.

[2] Appendix LXX.

[3] Warrant of 18th February, 1751.

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entire Standing Army in 1768, and in many other years of the last century.

The army of the East India Company.

27. The European Army of the late East India Company, which in 1858 became part of the Army of the Crown, was first brought to the notice of Parliament during this reign.[1] The forces late of the Company (and now of the Crown) in the East Indies consisted of two classes—1stly, Native, and 2ndly, European; in addition to which the Crown had the power of sending a portion of the Royal Army to India in aid of the Company, and for the protection of its dominions.

Charter of William III., 1698.

28. The Charter[2] of the 5th September, 1698, granted by William III. for the incorporation of "The English Company trading to the East Indies," more familiarly known as the "East India Company,"—granted to the Company[3] the rule and government of all such forts, factories, and plantations as might thereafter be settled by them within the East Indies, and empowered the Company to appoint Governors and Officers from time to time in and for the said forts, factories, and plantations. The Charter then authorised such Governors and Officers, according to the directions of the Company, to raise, train, and muster such Military forces as should be necessary for the defence of the forts, factories, and plantations, but always reserving the Sovereign right of the Crown over all the forts, places, and plantations.

As to native troops raised under this Charter.

29. Under this Charter both Native and European troops were raised by the Company. The Native troops are raised as Local troops in each Presidency, and in 1868 amount in number, as the Statement in the Appendix[4] shows, to 129,318 men. They are governed not by the Mutiny Act,[5] but by Articles of War, made by the Governor-General of India in Council, under authority given to him by the Parliament[6] of Great Britain. Those at present

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[1] East India Company's Mutiny Act, 27 Geo. II., c. 9.
[2] 'Law relating to India,' 1851, p. 2. Allen, London.
[3] Ib., p. 10. [4] Appendix LXIX., (4). [5] See sect. 1 of Mutiny Act, 1868.
[6] 53 Geo. III., c. 155, sec. 96, 97; 3 & 4 Wm. IV., c. 85, sect. 43.

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in force were enacted by the Legislative Council of India in 1861[1] and 1863.[2]

As to European troops of the Company.

30. The Company's European troops were first raised with the sanction of Parliament, under the 21st Geo. III., c. 65, sec. 32. Under licence from the Crown, the Company were authorised to enlist men (Her Majesty's subjects) to serve as soldiers in the East Indies, and at liberty to keep, in any part of Her Majesty's dominions in Europe, a depôt of 2000 men in time of war, and of 1000 men in time of peace. They were not authorised to train or discipline these men, nor were the latter subject to any Mutiny Act until their arrival in India. Further powers were therefore needed from Parliament, and were granted by the 39th Geo. III., c. 109.

Raised under 39 Geo. III.

31. Under this Act the Crown took the enlistment of men for serving in India into its own hands, and on petition from the Company, transferred recruits to them at an agreed sum per head for the cost of recruiting. Authority was given to the Company to train and exercise recruits, not exceeding 2000, and to appoint officers for that purpose (bearing also Her Majesty's commission) at pay not exceeding the sums stated in the Act. The number which the Crown could hold for transfer to the Company was limited to 3000 men, or such a number as the Mutiny Act for the time being should specify.[3] All the men raised were liable to the Mutiny Act until embarked for India.

Subsequent arrangements till the force was transferred to the Crown.

32. These, with some amendments made by later Acts,[4] were the principal arrangements under which the European Army of the East India Company was raised. When in India it was governed by a separate Mutiny Act, perpetual in duration, though re-enacted from time to time with amendments. The first was the 27 Geo. II., c. 9, and the last of these Acts the 20 & 21 Vic., c. 66, which was repealed by 26 & 27 Vic., c. 48. After the Indian Mutiny, all these troops—European and native—were transferred to the service of the Crown by the 21 & 22 Vic., c. 106, but many of the former refused to acknowledge the

[1] Act, No. 29. [2] Act, No. 5. [3] Sect. 8.
[4] 50 Geo. III., c. 87; 52 Geo. III., c. 122.

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authority of *Parliament* to make the transfer. They demanded re-engagement and bounty for their transfer, and failing to get the latter, were offered their discharge. In 1860 enlistment for this European force was put a stop to by the 23 & 24 Vic., c. 100, and in 1861 the officers and soldiers comprising it were invited to join, and many of them were transferred to the regular Army under the authority of the 24 & 25 Vic., c. 74. Thus the European Army of the late East India Company—except a small residue, amounting, in 1868, to 2872 officers and 1347 non-commissioned officers and men—became merged into the Military forces of the Crown.

As to troops of the regular Army in India.

33. As to the maintenance, or limit as to numbers, there was no obligation imposed by Parliament on the East India Company with regard to their *own* Army until the year 1788, but from that year the Company were bound to maintain an Establishment of 12,200 European, and some portion of the Imperial troops, in India. By the 28 Geo. III., c. 8, the Board of Control could direct a force, not exceeding 8045 officers and men of the Royal Army, to be maintained in India out of the Local revenue, and this number was ultimately increased to 20,000 men.[1] If the Directors required a larger force in India, the Board of Control could sanction such being sent there. All the troops sent to India are placed on the Indian Establishment, and from that time cease to be voted on the Army Estimates, but—subject to the increase of expenditure occasioned by their immediate recall — there is no statutory restraint on the power which the Crown has of recalling these troops — amounting in 1868 to 56,366 men — to this country.

A.D. 1730. Forts and troops in Africa.

34. Some mention should perhaps be made of the votes in supply first made in this reign to the African Company for the charge they were at[2] in maintaining "forts and castles with their full complement of men" on the coast of Africa. The Company had borne these expenses from

[1] 53 Geo. III., c. 155, sec. 87.

[2] 21 Com. Journ., p. 478.

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1702[1] to 1729 without aid from the Government, but they appealed to the House of Commons in the year 1730 for a pecuniary grant. An annual estimate[2] for this service was ordered from the Company and presented to the Commons. A vote of about 13,000*l.* per annum was made in favour of the Company until all the forts and military establishments were vested in the Crown by the 5 Geo. III., c. 44.[3]

35. The first debate of importance during the Reign on the number of the Land forces was raised upon the two estimates for the year 1732,[4] on the first of which it was proposed to vote 17,709 men (including invalids) for Great Britain, and on the other 6047 for service abroad. Opposition was, as usual, given to the first estimate, and Lord Morpeth moved to reduce the vote to 12,000 men. Sir Robert Walpole urged the Commons to sanction the larger number for *one* year, and the estimate was carried by a majority of 241 to 171.

A.D. 1732. Motion for reduction to 12,000 men.

36. No reduction having been made in the first estimate, and the other having been increased to 9187 men, the House of Commons[5] in the year 1738 strove but failed to obtain a reduction to 12,000 men in Great Britain. A very decided opposition was made to the vote, and the same reduction was moved in the House of Lords on the second reading of the Mutiny Bill. The speakers in both Houses in favour of reduction were the leading Statesmen of that period; and these debates, which even at the present time repay the trouble of perusal, evidence the very strong feeling entertained in the country against the establishment of a Standing Army in time of peace. The motion was lost in the Commons by a majority of 249 against 164, and in the Lords by 99 to 36 votes. In the following year the opposition was renewed in the House of Commons by Mr. Shippen,[6] but without any successful result.

A.D. 1738. Motion again renewed.

[1] 21 Com. Journ., p. 486. [2] Ib., p. 522.

[3] 23 Geo. II., c. 31; 25 Geo. II., c. 40; 4 Geo. III., c. 20; 5 Geo. III., c. 44; Smith's 'Wealth of Nations,' vol. iii., p. 233.

[4] 21 Com. Journ., p. 775; 8 Parl. Hist., pp. 882-916.

[5] 23 Com. Journ., p. 12; 10 Parl. Hist., Debate in House of Commons, pp. 375-467; Debate in the House of Lords, pp. 479-561.

[6] 23 Com. Journ, p. 224, and 10 Parl. Hist., p. 1334.

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37. The augmentation for the year 1740[1] gave rise to much opposition, not only as to the augmentation itself, but as to the manner in which the Army should be increased, whether by adding New or by increasing the strength of Existing Regiments. The political aspect of the Army, and the abuse alleged to be made of the patronage, furnished the chief grounds of objection to Augmentation by Regiments; but the Ministers were supported by Parliament, and the Army in Great Britain was raised to 28,852 men. These augmentations continued until the Army Estimates for the year 1748[2] showed 49,939 for Great Britain, and 15,627 men for the Plantations and abroad. The War was, however, brought to a close, and the estimates of the following year[3] show an immediate reduction of the Forces to 18,857 men for Great Britain, and 9542 for the Plantations.

A.D. 1740. Augmentation opposed. A.D. 1749. Immediate reduction on peace.

38. The Augmentation of the year 1755 was supported by both Houses of Parliament, until the numbers of men accumulated to 67,776 for the year 1762[4] in Great Britain and Germany, and to 37,397 in the Plantations and garrisons abroad. Then came the Peace, and in the estimates for the year 1763[5] the numbers were reduced to 17,536 men in Great Britain, and 28,406 men in the Plantations and garrisons abroad.

Augmentation in 1755, and reduction in 1763.

39. With the exception of the vote for 5000 men for *one* year—1770—on the apprehension of war with Spain, no great increase in the Standing Army was made; but the numbers were gradually increased to 20,057 men for Great Britain in the year 1778. The recognition of the Independence of America by France involved a war with the latter country, and the estimates for the service of 1779[6] were for 30,346 men in Great Britain, for 47,038 men, and 5360 from the Irish Establishment in the Plantations—for 14,440 men in augmentation, and, lastly, for 24,039 foreigners, and 786

Augmentation in 1779.

[1] 23 Com. Journ., pp. 388, 413; 11 Parl. Hist., pp. 248, 894-928. See the Petitions against the Standing Army, 12 Parl. Hist., pp. 417 to 427, and the Debate on Grievances, p. 428. [2] 25 Com. Journ., pp. 440, 441. [3] Ib., p. 671. [4] 29 Com. Journ., p. 29. [5] Ib., pp. 503-5. [6] 37 Com. Journ., p. 20.

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foreign artillery serving abroad under treaties in the pay of Great Britain.

40. In 1783[1] the troops in Great Britain were increased to 54,678 men, and were voted for 121 days, ending the 24th April, 1783. Then came the Peace, and the estimate for the year 1784[2] provided for *only* 17,483 men in Great Britain, 950 foreign troops, 12,247 men in the Plantations, and (as a new vote) 6,366 men for India. Therefore with the war the expenses of the war ceased. Separate establishments for particular places or services were not continued on foot, but absolutely abandoned, after the places had been ceded, or the services for which they had been originally formed had been fulfilled. Reduction in 1784.

41. This Establishment was not altered until the year 1787-8, when the expense of the garrisons at home was diminished by the reduction of the Guards (at the expressed wish of the King), and of the force in the Plantations increased[3] by 3,064 men. The augmentation was opposed, and the continuance of so large a force in arms raised a debate in 1790,[4] which was the occasion of the rupture in political association and friendship between Mr. Fox and Mr. Burke. In the year 1792 a small reduction was proposed to Parliament.[5] Augmentation in 1787-8. Opposed in 1790 by Mr. Fox, and approved by Mr. Burke.

42. In the year 1787 the Crown gained by treaty with Hesse Cassel, and an annual subsidy of 36,000*l.*, the succour of 12,000 Hessian troops to serve in the pay of Great Britain in Europe, including Great Britain and Ireland, in case their services were called for under the treaty. The Commons did not grant the subsidy without debate; but Mr. Burke supported the ministry, and the vote was taken without a division.[6] Treaty for 12,000 Hessian troops.

43. Before any reduction could be made, it became necessary to increase the strength of the Army for the year 1794, and to continue it until the close of the Belgian Campaign in 1815. At the outbreak of the War the Defensive Forces of the three kingdoms were put in array to A.D. 1794-1815. — Augmentation.

[1] 39 Com. Journ., p. 242. [2] Ib., p. 746. [3] 26 Parl. Hist., p. 1282.
[4] 28 Parl. Hist., p. 370. [5] 29 Parl. Hist., p. 811. [6] 26 Parl. Hist., pp. 1258-1278.



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defend our shores, and throughout the struggle abroad the weight of it was borne rather by native troops than by foreigners in our pay.

Parliament evinced no intention of perpetuating a large Standing Army.

44. At the commencement of the war, Parliament evinced no intention of sanctioning the continuance of an Army beyond the absolute requirements of the contest. Thus in the year 1801-2 the supplies for the two establishments (Home and Plantations) were taken for four short periods—by the first vote for 77,378 and 83,986 men up to the 24th March, 1802; by the second vote for 84,445 and 76,679 men up to the 24th May; by the third vote for the same numbers up to the 24th June; and by the fourth vote for 70,299 and 25,494 men up to the end of the year 1802.[1] The supplies for the foreign troops[2] (13,726 men) were taken for two periods.

Force in arms in 1814, and reductions until 1818.

45. Augmentations were made to the Army from the commencement of the second war with France until in the year 1814 (at which period the Home and Foreign Establishments had been united in one total) the numbers[3] voted were 236,497 men, and of foreign troops 32,216 men. These numbers were gradually lessened; but, as comparatively few foreigners were employed, the reduction of the Army became a matter of difficulty at the termination of the war, and the Peace Establishment *after* has assumed a far larger proportion than the Peace Establishment *before* that event.

Reductions made yearly from 1815 to 1818.

46. The reductions commenced in 1815 and were completed in 1818. They show these figures:—September to June, 1815,[4] 204,386 men, and 10,883 foreign troops, were voted; and for the remainder of the year, 190,252 men and 21,314 foreign troops. For the year 1816,[5] 111,756 men, with 34,031 left in the occupation of Paris and paid for by France, and 21,401 foreign troops. For the year 1817,[6] 92,282 men, with 21,429 in Paris, and no foreign troops. For the year 1818,[7] 90,285 men, with 22,993 in Paris; and for the year 1818,[8] 80,479 men, and none in Paris.

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[1] 57 Com. Journ., pp. 685, 790, 910, 964.
[2] Ib., pp. 699, 793.
[3] 69 ib, p. 568.
[4] 70 ib., pp. 497, 553.
[5] 71 ib., p. 600.
[6] 72 ib., p. 549.
[7] 73 ib., p. 487.
[8] 74 ib., p. 686.

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47. The continuance of so large a number of men upon full pay was not permitted to pass without challenge from the Opposition; but it must be remembered that at that time there were no organized Police arrangements as they now exist in the Metropolis—throughout Britain, or as in Ireland. The soldiers were retained in arms for Police duties in aid of the civil power, and Lord Palmerston [1] supported the Estimate upon these grounds.

Want of police force rendered a large army necessary.

48. From the Establishment of 1818 the numbers (save in the years 1822, 1823, and 1824) gradually rose to 102,283 men voted for the year 1853. The Crimean War raised the numbers of the Army in 1854 to 162,977, with an augmentation of 15,000 men; in 1855-6 to 193,593, of whom only 14,950 were foreigners; in 1856 to 246,716 men, the number of foreign troops being about 20,000 men.

Gradual increase of numbers till 1857.

49. The reductions after the War followed rapidly upon its close. In the year 1857-8, the foreign troops do not appear in the Estimates. The total decrease was 119,920 men, and the strength of the Army was 126,796 men. The Indian Mutiny in 1858 again raised the strength of the Army, and absorbed in that year 92,739 in India, leaving 130,135 upon the Home Establishment. The Army has never been reduced under 200,000 men since that period.

Reductions till the Indian Mutiny.

50. This larger number of men has been thought to justify if not to require, an altered method of administration than that upon which the Civil administration of the Army rested prior to the Crimean War. The principle has since that event come into vogue, of making the Army wholly independent of the Civil community, and its own administrators of the money voted for its support—self-contained and capable of supplying all its wants by members of its own body. No doubt, the numbers are sufficient —if our Constitutional policy does not forbid it—to make a separate *caste* of the Army, and all the changes made since

With increased numbers the State should not retain the old rules of army administration?

[1] 39 H. D. (O. S.), p. 763.



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the Crimean War have had that tendency, if not that object in view.

The status of Commissariat and Store Departments changed from Civil to Military.

51. A change by no means unimportant is that made in the status of those Public Servants, if not of those Departments, holding Money and Stores for the supplies of the Army. Prior to 1854 the Public Money was held by the Treasury as represented by the Commissariat,

(1.) As to the Commissariat.

and this financial duty was discharged by gentlemen receiving their appointment from the Treasury, to whom they were directly responsible. Subsequently the Commissariat was transferred to the War Office, and a "Committee of Officers"[1] advised that the Treasury regulations of the 1st March, 1852 should be cancelled, and that rules should be established by which the Secretary of State *and Commander-in-Chief* should govern themselves in recommending the Commissariat officers for admission, employment, promotion or retirement. In lieu of entering the Treasury as clerks at the early age of sixteen, being trained in financial and commercial duties under the Treasury, the Royal Warrant of 28th October, 1858, provides that the Commissaries shall be appointed from the Commissioned Officers of the Army who have had two years' service, and are under twenty-five years of age, upon the recommendation of their Commanding Officers, and the Subordinate persons in the Commissariat are to be taken from the ranks of the Army as volunteers, and returned to them in case of misconduct or inefficiency. Before this Warrant the Commissariat had *no military character*,[2] and *that* was deemed *essential for its efficiency* by the military authorities. The strength of the Commissariat is 206 officers and 600 men.

(2.) As to the Store Department.

52. The Public Stores were held originally by the Board of Ordnance, and on the abolition of that department by the Secretary of State, acting through a staff of *Civil servants* holding appointments for life at the various places or stations where depôts of stores for the supply of the Navy and

[1] See Recital in the Royal Warrant.

[2] Evidence, p. 307, before Committee on Military Organisation. 1860.

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Army had been placed. In 1861 it was deemed to be expedient to change the status of these employés, by giving them commissions as *officers* of the Military Store Department, under Royal Sign Manual, and accordingly a Royal Warrant of the 23rd April carried this reorganization into effect. The candidates for office are, as a general rule, to be taken between the ages of eighteen and twenty-three years, after passing an examination before the Civil Service Commissioners—but with the concurrence of *the Commander-in-Chief*—any officers serving in the Army under twenty-five years of age may be appointed without such examination. A roster of service was established that they might serve at home and abroad with the Army, and their employment ceased to be Local. The strength of this corps is 193 officers and 300 men.

53. The Waggon Train of the Peninsular War was disbanded at the peace, and during the Crimean War a Land Transport was raised as a military corps, under warrant of 24th June, 1855. This corps was changed in its name to "The Military Train" by Royal Warrant of the 11th August, 1856, the men being enlisted as Soldiers upon Cavalry pay, and the Officers Commissioned upon Infantry pay, their commissions being purchasable at Infantry prices. The total strength of the corps in officers and men is 1798.

The Military Train.

54. For the supply of the military hospitals the Purveyor's Department was re-established by Royal Warrant of 27th April, 1853, for carrying out the *financial* affairs of the several regimental and other military hospitals. The Purveyors were to rank as Subalterns in the Army, and after fifteen years' service as Captains; but by Royal Warrant of the 31st March, 1855, the Department was reorganised,—the Purveyor-in-Chief, a Deputy-in-Chief, and the Purveyors being commissioned as officers, with the relative rank of Major, Captain, and Lieutenant, according to the dates of their commissions. This warrant was cancelled by that of the 24th December, 1860 (which is at present in force), and the Establishment was increased to 86 officers, to whom the *sole* charge of

Purveyor's Department.

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all hospital buildings, outbuildings, and grounds (and other extensive powers) were given.

Army Hospital Corps.

55. The sick and wounded in hospital are attended by the Army Hospital Corps (of 1000 men), raised as non-commissioned officers and privates, volunteering from the ranks of the Army with such service as the Commander-in-Chief shall from time to time fix as a qualification. None but Soldiers are admitted except with special leave of the Secretary of State, and all are liable to be discharged by the Commander-in-Chief at any time, or to be returned to the Regiments from which they originally came. The Warrants that establish this corps are the 1st August 1857, and the 27th September, 1861.

Exclusive policy pursued towards the Army.

56. Various other arrangements of this character have been made, extending even to the education of children, which is carried out by enlisted soldiers "subject to the Mutiny Act, to the Articles of War, and to the general regulations and orders of the Army,"[1] under a Council for Military Education; and no doubt the ruling policy would appear to be to confine the Soldiers to Camps, now that four have been established; to inflict special Punishments upon them as Criminals, now that Military Prisons have been set apart for them; to give them separate attendance as invalids, now that large hospitals have been erected; separate instruction as members of religious communities, now that Army chaplains have been appointed, and military districts created;[2] separate sources of supply, now that manufactories have been established presided over by Military Officers; special legislation, now that the 29 & 30 Vic., c. 35, has been passed for their protection. All these expedients may by some be thought to be essential for the discipline and efficiency of the Army, but they are not germain to the Policy which hitherto has guided the State in its relationship towards the Army.

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[1] See Royal Warrant of 19th May, 1863.

[2] 31 & 32 Vic., c. 83.

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# CHAPTER XIV.

## THE RESERVE FORCES.

1. INDEPENDENTLY of the Navy—the defence of the realm has mainly rested—both in theory and in fact, upon the people acting as armed citizens under and in support of the authority of the Crown against Foreign Enemies on Invasion, or against Traitors on Insurrection. Our National security has hitherto rested upon this solid basis,—that the people, as a race, brave, enduring, and loyal, are able and willing at all times to defend themselves and their country though the world be in arms against them.

The Realm has always been defended by its Armed Citizens.

2. Hitherto it has been of the very essence of our National policy in Military affairs to uphold this element of our national strength, but now that large armies are kept on foot by all European nations, including our own, it is vitally important, both for defensive and political reasons, to maintain our Volunteer Force. The tendency of a Standing Army is to invite security and to draw the people off from the duty of Self-protection. "A standing mercenary army in any free country," said Lord Carteret, "necessarily destroys the Martial spirit and Discipline of the rest of the people, and all histories show that a cowardly people *must* soon become slaves to a foreign or *to a domestic* army."[1]

This policy essential to our National strength.

3. The ranks of foreign armies are filled by Conscripts; those of the British Army by Volunteers. The operation of the two principles may lead to widely different results. Into the ranks of the North German army Prussia[2] takes annually 100,000 men out of a population of 30,000,000; and France,[3] in like manner, into her own army, takes nominally 100,000, but actually 70,000 men out of a population of 37,000,000. These citizens—the Conscription

The Conscription Laws of Prussia and France train all Classes to the use of Arms.

[1] 10 Parl. Hist., p. 494. [2] Appendix P. [3] Appendix Q.

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acting on rich and poor alike—are trained to the use of arms for a certain number of years, and then discharged into the civil population. By these measures, not *one* only, but *all* classes, are trained to arms. The whole mass is leavened, and there is no political danger—which must sooner or later arise —where a monopoly of military skill is given by the State to one—if not to the lowest class of its citizens. Without the Volunteers, such would be the condition of England—but even with that Force would it be safe to eliminate, as some desire to do, the Aristocratic element from the Regular Army, by giving the command—as at the Commonwealth—to men raised from its ranks, and then to trust the wealth and Liberties of England to the defence of the Army?

In England but for the Volunteer System the Poorer Class only would be trained by the State to the use of Arms.

4. The policy of the State before the Crimean war, was to recognise and act upon the principle of counterpoise,[1] which appears now to be wholly ignored. It was deemed not prudent to trust the power of the sword, either in men or matériel to one Minister only, or to one Commander only, or to form all the Military Forces into one Mass or Confederation. Power was divided, and the Army could not become politically dangerous under such arrangements; for without the concurrence of several responsible Ministers and as many Officers, the entire military power of the Crown could not be used against the liberties of the people.

Military Power of the Crown now Concentrated.

5. In recent years, as a matter of fact, not only have the Military Forces of the Crown been vastly increased in the several branches — but the Administration and Command of them concentrated. Therefore, as a consequence, so far as the people are concerned, the military power is not under the same Constitutional restraint, nor so politically innocuous as in the last century. However, leaving this ground and looking at the aspect of Europe, no one can doubt that the continuance of a large Volunteer

Consequences of the System.

Volunteer Force essential for our National Security.

[1] "The Government naturally objected to the maintenance of an army regarded as a counterpoise to their own. They demanded the surrender of the weapons retained by the Volunteers, and succeeded, as far as they went, in obtaining them; but they are apparently either aghast at the bloodshed incurred or afraid to continue the experiment, and the last state of Spain is so far worse than the first." See 'Times,' of 14th Jan., 1869.

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Force on foot, is essential to render the authority of the British Crown, both at home and abroad, safe in that measure of security which, for the honour of these realms, it is the pride of every Loyal Subject to see attained.

6. All the Reserve Forces of the Crown (except the Pension Force, to be referred to hereafter) are now and always have been held under the Command of the Lord-Lieutenant of each county. The responsibility for their efficiency and discipline rests solely with him, holding, both by Constitutional usage and Statutory authority, the place of Chief Command. The appointment and the displacement[1] of officers devolve upon him; the Ministers of the Crown have only the power of vetoing an improper person should such be named by a Lord-Lieutenant. And it has been laid down by statesmen on both sides of the House, that Political motive should never interfere with such a function—indeed, in the view taken of it by the late Sir Robert Peel, "the spirit of the law" "is to deprive the Crown of the power of negativing the appointments of Lords-Lieutenant, on the ground of political disagreement alone."[2]

All Reserve Forces (Local) are under the Lord-Lieutenant.

42 Geo. III., c. 90, sec. 5.

7. I have before observed that two Non-Political offices of totally distinct import are often found United in the same person. As Custos Rotulorum—the appointee is the *Civil* functionary responsible in a sense for the Preservation of Order and the due Administration of Justice in his County, and in *that capacity* properly communicates with the Home Office. As Lord-Lieutenant he is essentially a *Military* officer, and his communications as such are to be made, not to the Home, but to the War Office; for obviously the interference of a Military officer—either the Commander-in-Chief of the Militia in each county, or the General of the Army in each district—with the Administration of Justice or Civil police, would be unconstitutional.

Totally distinct Offices as Lord-Lieutenant and Custos Rotulorum held by same person.

[1] Appendix LXXI.; Dickson *v.* Combermere, 3 Fos. and Fin., p. 348.

[2] See Lord John Russell's and Sir Robert Peel's views stated 29 H. D. (3), pp. 294, 295.

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8. The office of Lord-Lieutenant is essentially statutory, and his appointment by the Crown as Lieutenant (and not as Custos Rotulorum) is by Patent granted under the authority of the Militia Laws.[1] Like every other Military officer, he is liable to dismissal at the pleasure of the Crown, and though fortunately the necessity for the exercise of this prerogative seldom presents itself,[2] yet instances of such dismissals are upon record.

Office of Lord-Lieutenant is purely Statutory.

9. His official relationship towards the Sovereign is that of a General[3] of a district—reporting to the Crown through the Secretary of State for the War Department. Such communications are therefore of a confidential nature, and the Ministers have refused to lay them before Parliament, unless a case of the strongest necessity can be made out to justify or require their production.[4]

His status and function are those of a General in Command of a Military district.

10. The Original Establishment in Charles II.'s reign, and the subsequent Reorganization of the Militia in 1786, have already been shown, but before dealing with the Volunteer Force, some additional information must be given with reference to the Militia, since it has been placed in the position of a Reserve Force secondary in importance to the Standing Army. This will be done by furnishing the reader with a very brief outline of the subsequent statutory enactments arranged in three periods. 1st. From the outbreak of the Revolutionary War with France to the Peace of Amiens; 2nd. During the second French and Peninsular War until the decline of the Militia Force; 3rd. From the

As to the Militia as a Reserve Force.

Divided into three periods.

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[1] 14 Car. II., c. 3, sec. 2; and 42 Geo. III., c. 90, sec. 2; see Appendix LXXII.

[2] As to the dismissal of Lords Carmarthen and Pembroke in 1780, see 21 Parl. Hist., p. 226; and of Earl Fitzwilliam in 1819, see 2 Ann. Reg. (1819), p. 109; 41 H D. (O. S.), p. 15; Sidmouth's Life, vol. iii., p. 270.

[3] The Lord-Lieutenant may act as Colonel Commandant under certain circumstances (42 Geo. III., c. 90, sec. 72). An Officer holding the rank of Honorary Colonel, introduced in 1854, stands in relation to his Regiment in a position analogous to that of a General Officer who is the Colonel of a Line Regiment, 135 H. D. (3), p. 905.

[4] 50 H. D. (3), p. 1330.

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re-establishment of the Militia in 1853 upon the Voluntary principle.

I. As to the first Period:—

11. Under the Militia Act in force, upon the breaking out of the French Revolutionary War,[1] the statutory quota of the Militia for England and Wales was fixed at 30,740 men, to be raised by ballot, or by the parish officers procuring volunteers at a bounty (not exceeding 6*l.*) to be paid out of the rates. The Militia was forthwith embodied; and to provide against the destitution that might arise to the wives and families of the married Militiamen, Parliament, in recognition of their claims to a special Provision, passed an Act granting them relief by Parish Officers, though the money expended was principally charged upon the County Rate.[2] A.D. 1792-3. Militia Force.

12. In March, 1794, the 34 Geo. III., c. 16,[3] was passed for augmenting the Militia, by enabling the Crown, through the Lords-Lieutenant, to accept from persons *qualified* according to the *Militia laws*, offers of raising one or more companies of men, to be added to the Militia, as Volunteers, and to confer upon them temporary rank (not above the rank of a Lieutenant-Colonel). The Act also authorized the churchwardens, with the consent of the Vestry, to increase the bounty to Volunteers enrolled under 26 Geo. III., c. 107, to a sum of 10*l.* A.D. 1794. Augmented.

13. In June, 1795, another Act[4] authorised men to volunteer from the Militia (in the proportion of 1 to 10) into the Artillery or Navy; their vacancies being supplied by ordinary recruiting, at a bounty of ten guineas per man. A.D. 1795. Allowed to volunteer into the Regular Forces.

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[1] 26 Geo. III., c. 107.

[2] See the first Act (33 Geo. III., c. 8). The Law was consolidated in 1803. See 43 Geo. III., c. 47, and later Acts, and especially 5 & 6 Wm. IV., c. 70, sec. 60. The Wife or Child of a Militiaman appears to have no special Claim to relief over that possessed by the Wife or Child of a Soldier. See Rules of the Poor Law Commissioners; Arch.'s 'Poor Law,' p. 327; and 138 H. D. (3), p. 180, and 144, ib, p. 947.

[3] 31 Parl. Hist., pp. 83, 206, 211, 233.

[4] 35 Geo. III., c. 83.

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14. In November, 1796,[1] Parliament sanctioned the raising of a supplementary Militia of 59,441 men for England, and of 4437 men for Wales, making (in addition to the Volunteers raised under the 34 Geo. III.) a total Militia Force of 94,618 men.

A.D. 1796. Supplementary Militia.

15. By cap. 6[2] (amended by caps. 23 and 139, of the same session) a provisional Cavalry Force (estimated by Mr. Pitt to number 20,000) was to be raised by ballot, as a further Augmentation to the Militia, in the proportion of a horse and man for every ten horses kept, with an exemption in favour of a Volunteer (under the 34 Geo. III., c. 16) who had only three horses. If in any district three-fourths of the quota volunteered their services, the ballot was to be suspended. By later statutes (38 Geo. III., c. 51 and 94) power was taken to billet and to embody this force, either wholly or in part; and by 39 Geo. III., c. 23, the part unembodied was disbanded, and that embodied permitted to volunteer for service out of Great Britain.

Provisional Cavalry.

16. In July, 1797, the Militia system was first applied to Scotland,[3] and that kingdom had to raise 6000 militiamen, who, in May, 1798, were embodied under the 38 Geo. III., c. 44.

A.D. 1797. Scotch Militia established.

17. In January, 1798, the 38 Geo. III., c. 17 was passed (the operation of which was subsequently enlarged by cap. 55 of the same session), authorising 10,000 men of the supplementary Militia (but not exceeding one-fifth of the quota for any county and their places not being supplied by ballot) to volunteer into the regular army "to serve during the continuance of the present war, and six months after the conclusion of a general peace, and no longer, and not to be liable to serve out of Europe;" and in February, caps. 18 and 19 authorised one-half of the supplementary Militia to be embodied by ballot before the 10th March, 1798, and the residue whenever the occasion should appear to his Majesty to require it.[4]

A.D. 1798. Volunteers from Militia to Army for "limited" Service.

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[1] 37 Geo. III., c. 3, amended by c. 22; 32 Parl. Hist., p. 1230; 33 ib., p. 1303.

[2] This Bill was strongly opposed by General Tarleton and others. See 32 Parl. Hist., p. 1242.

[3] 37 Geo. III., c. 103 (amended by 38 Geo. III., c. 12, and 39 Geo. III., c. 62.)

[4] 33 Parl. Hist., p. 1303.

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18. In June[1] of the same year, Voluntary Offers were made to the Crown from the British Militia to serve in Ireland for the suppression of the Rebellion, and the Ministers applied to Parliament for Legislative sanction to this Service. The expedient—admitted to be entirely novel—was strongly opposed in both Houses, as altering the nature and character of the Constitutional force of the Country. An Act was, however, passed for a limited period, permitting 12,000 Militiamen to serve in Ireland for the suppression of the Rebellion.[2]

Militia Volunteers to serve in Ireland.

19. In January, 1799, further encouragement was given to the Volunteers, by exempting them from the Supplementary Militia (under certain conditions specified in 39 Geo. III., c. 14); and later (in May) another Act (c. 35) for exempting them from the Militia during the war.

A.D. 1799.

Volunteers exempted from Militia.

20. In July, the Supplementary Militia was abolished by 39 Geo. III., c. 106, and the Acts under which it had been formed repealed. The number of the Militia (including Volunteers raised under 34 Geo. III., c. 16) was fixed at 76,566 men for England and Wales. The object of Parliament being to increase the Regular Army, his Majesty was authorised to pardon all enlisted Militia deserters, and to continue them in the Army. Further, to effect this object, his Majesty was authorised to name regiments into which Militiamen might enlist, "to serve for five years, or during the continuance of the war, and for six months after the expiration thereof, and no longer; and that such men should not be liable to be sent, or to serve out of Europe." The bounty was ten guineas, the standard of height five feet four inches, but not more than three-fifths of the legal quota of any regiment were to enlist.

Supplementary Militia abolished and men encouraged to enlist.

[1] By cap. 74, the Militia for the Stannaries was re-organized, the quota being fixed at one-seventh of the number of men appearing from the lists to be liable to the ballot, but the Act was soon repealed and other provisions made by 42 Geo. III., cap. 72.

[2] 38 Geo. III., c. 66, and see 33 Parl. Hist., 1594 and 1614.

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21. This measure was not permitted to pass without a strong protest being placed on the 'Lords' Journals;'[1] but its operation must be considered as successful, so far as the Army was benefited. From 80,629 Militia men, on the 1st of July, 15,712 men subsequently volunteered to the Regular Army;[2] so that in October the principle of the Act was extended, upon an allegation contained in the preamble of the 39 and 40 Geo. III., c. 1, "that the great increase thus made to the Regular Army had enabled his Majesty successfully to employ a large force in Holland." Under the authority of this latter statute, 10,414 men, out of a reduced Militia Establishment of 63,879 men, passed into the Regular Army.

Opposition to, and result of, the Measure.

Act extended.

22. The objectors to the first were the opposers also of the second Act. Their protest upon the 'Lords' Journals' sets forth[3] "that the Militia will necessarily be reduced to a mere standing army of the worst sort; independent of an annual vote of Parliament; deprived of all its former constitutional advantages; connected with the people by nothing but the unequal and oppressive burdens it imposes on them; and commanded by such persons as may be procured, to be regulating officers to a mere drill of Army recruits;" and "that the landed interest, already so heavily burdened, is most materially affected by this total revolution in the Militia system, inasmuch as the peculiar expenses of a Militia originally formed for our unalienable domestic defence and insular garrison, are unjustly continued on the oppressed owners and occupiers of land, when they are by this measure deprived of the advantages which they had purchased, namely, those of security, resulting from a permanent domestic protection for their wives and children, which, under the faith of Parliament, was held out to them as the valuable consideration for heavy taxes imposed solely on them."

Opposition and Protest in the Lords.

23. In December, 1801, the number of the Militia for Eng-

[1] 34 Parl. Hist., p. 1139. [2] 61 Com. Journ., p. 636.
[3] 34 Parl. Hist., pp. 1185, 1186.

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land and Wales was fixed by 42 Geo. III., c. 12, at 30,586 privates after their disembodiment, and until the 25th of March, 1803; and by the Peace of Amiens the men raised under 38 Geo. III., c. 17, and 39 Geo. III., c. 106, were released from service. The exemptions from the Militia, given to the Volunteers by the 39 Geo. III., c. 14 and 15, as indeed their services under 22 Geo. III., c. 79, and 37 Geo. III., c. 74, also ceased.

A.D. 1801. Militia reduced.

24. However, during the peace, an Act[1] was passed to enable his Majesty to continue the Volunteer Force on foot, and, by c. 90 and 91 of the same session,[2] all the Militia laws for England and Scotland were revised and consolidated, and the quota fixed for England at 40,963 men, and for Scotland at 7,950 men.

Laws Consolidated.

II. As to the Second Period.

25. Before tracing the action of Parliament during this period, it will be desirable to glance at some few of the provisions of the General Militia Act, 1802. From the examination of the Act it would appear that the main object of the Militia law, when consolidated, was to raise a statutory quota of men between the ages of 18 and 45,[3] for the defence of Great Britain, by ballot, giving to any one physically capable, permission to volunteer[4] for a 6*l.* bounty, or if chosen to serve, on receiving[5] half the current price of a substitute—the other half being supplied by the parish—or to provide a substitute (not having more than one child), or to pay a fine of 10*l.* for (five years) exemption.[6]

A.D. 1802. Militia consolidation Act.

26. The service of a balloted[7] man was to be for five years certain, with the option of re-engaging on an agreed bounty, if the option was expressed at any time within four months of the expiration of the original term. The service of a volunteer or substitute[8] was to be "for

Terms of Service.

[1] 42 Geo. III., c. 66, and 3 Parl. Hist., p. 535.
[2] Amended by 43 Geo. III., c. 19.
[3] Sec. 25.
[4] Secs. 42-58.
[5] Sec. 122.
[6] Sec. 158.
[7] Secs. 41, 125, 126.
[8] Sec. 123.

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five years, *or such further* time as the Militia shall remain embodied," with a bounty[1] of 1*l.* 1*s.* to be paid down, and at the interval of each succeeding three years of prolonged service.

Exemptions.

27. Certain persons, such as apprentices,[2] or poor men[3] with one child or more, were exempt. The enrolment of a servant[4] did not vacate his contract for service, unless the Militia should be embodied, or he left his master for a longer period than the law required for training and exercise. His absence for such a purpose entitled the master to a fair abatement for wages, which, in case of difference, the magistrate adjusted.[5]

Punishment for failing to serve in Militia.

28. For failing to appear at the summons of the Lord-Lieutenant for embodiment or training, any man—unless disabled by sickness—was punishable as a deserter;[6] enlistment into the standing army was absolutely prohibited, being declared void, and the recruiting officer made liable to punishment.[7] On the other hand, no man could be raised for the Militia service by the beat of drum.[8]

Regimental Organisation.

29. The regimental organization was laid down *in detail* by the Act, the Crown being entrusted with a discretion "in every case for which no *special* provision had been made by the Act."[9] The rank of Militia officers was declared;[10] and half-pay officers serving as *subalterns* in the Militia, were allowed to hold their half-pay.[11]

Pay the same as Officers and Soldiers.

30. When called out, both officers and men of the Militia were to be entitled to the same pay as the officers and men of the line;[12] and the *men*, if disabled in service, were entitled to the benefit of Chelsea Hospital.[13]

Power in the Crown to increase the Militia.

31. A general power was given to the Crown—in cases of invasion, or of imminent danger, and of rebellion—to increase the Militia by an addition equal to half the original quota, calling Parliament together in fourteen days—if not sitting.

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[1] Sec. 41. [2] Sec. 49. [3] Secs. 43, 136. [4] Sec. 61.
[5] 15 and 16 Vic., c. 50., sec. 32; Rex. *v.* Taunton, 9 B. H., p. 430.
[6] Secs. 99, 116, 127, and 131. [7] Sec. 64. [8] Sec. 65.
[9] Sec. 71. [10] Sec. 73. [11] Sec. 82. [12] Sec. 117. [13] Sec. 86.

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32. Therefore, the main feature of the Militia Organization was that of a Defensive force—raised at the minimum cost of 6*l.* per man, in bounty—serving only in Great Britain, and when serving, receiving the same pay as the Regular Army. As a tax it was Personal and Local instead of being a General and Imperial Tax, and—having regard to the distribution of wealth amongst the persons liable to it, either in money or personal service—levied with great inequality.

General Summary.

33. The effect of the General Militia Act upon the recruiting of the regular forces, was to raise the cost of it. In the first place, if, for five years' service at home every volunteer could secure 6*l.* bounty, and every substitute a higher and unlimited bounty, the best market for his labour was the Militia. In the next place, by prohibiting enlistment *from* the Militia, the latter force took away from the Regular Army a class of recruits which otherwise would have come into its ranks. In addition to these circumstances, the labour market for the Military service of the Crown was disturbed by three competitors: 1st, The parish officers for Volunteers; 2nd. The persons balloted, for Substitutes; and 3rd. The recruiting-sergeant for Recruits to the Regular Army. As War approached, fear induced persons to provide substitutes at *any* cost, and that was again increased as the requirements of the State for the men became more urgent. The Ballot was therefore truly described as the Parent of high Bounties, and as destroying the normal condition of Recruiting.

Effect of the Act in the Recruiting for the Army.

Ballot the Parent of High Bounty.

34. In the debate of the measures of Lord Castlereagh to recruit the Army in 1807, Mr. Windham was at some pains to explain this position to the House.

Mr Windham's Statement of these Results.

35. "Within a period not exceeding the memory of many whom he was then addressing,[1] a guinea to buy necessaries, and a crown to drink the King's health, was all that was given to a recruit upon his entering the Army. A bounty properly so called, that is to say, a price to tempt a man to do what he was otherwise disinclined to,

Originally only a small Bounty for Army Service.

[1] 9 H. D. (O. S.), pp. 886, 887.



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was unknown.[1] The service was at its own price. So late as at the beginning of the American War, examples were found of Officers reprimanded by the War Office for having extended the bounty so far as to two or three guineas.

Causes of increase.

36. "Among the general causes operating to produce the change which afterwards took place (those great ones, namely, of the depreciation in the value of money, and the continuance of the pay at the same rate at which it stood in Charles II.'s time), a cause of a more limited, but of a more immediate effect, was the Militia.[2] This system, for reasons which he had often stated, and would not now repeat, did not, for several years after its establishment, produce any consequences affecting materially the recruiting of the Army.

Principally the Militia Ballot and Substitutes.

37. "But at last, as the Militia assumed a more regular form, as the practice gradually prevailed of calling it out, and keeping it constantly subdivided during every war, as its discipline improved, and the practice of substitution took the place of that of serving in person, its effects upon the Army began to be severely felt. The demand for substitutes on the part of men placed in circumstances the most disadvantageous for obtaining what they wanted upon reasonable terms, soon brought things to a state in which service in the Militia (a service for a few years, and within the kingdom), could be purchased only at a high premium, and in which men, therefore, could hardly be looked for in great numbers who would be willing to forego this premium, and enter the Army for nothing.

Hence Bounty for Army Service increased.

38. "The only expedient that occurred for remedying this evil was to give a bounty for the Army also, and thus vice to enable the Army to hold up its head, and bid against the Militia. But though this succeeded for a time, its very success was such as contained a principle destructive of its continuance; the effect of the competition being

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[1] In 1715 the Levy Money was 2*l.*; see Mis. Bk., p. 36., the Sec. at War's Order. See the chapter on "Recruiting" *post.*

[2] This view was strongly confirmed in the evidence before the Finance Committee of 1828, p. 157, and by Earl Grey in 1852; see 137 H. D. (3), p. 1291.

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to raise the price upon both services, till at length a sort of limit was produced, not merely by the consideration of expense, but by the effect which the high bounties had in producing desertion.

Desertion to gain another Bounty.

39. "Ballot created the necessity of Bounty. Bounty rising to excess, and losing as much by desertion as it gained by recruits, created in return the necessity of new ballot: then Bounties shot up to a height which not only stopped all ordinary recruiting, but created a burthen which it was impossible the country should long endure. Forty, fifty, and sixty guineas became the price of a recruit. Ballot and Bounty were indeed the only resources that seemed ever to have been thought of."

Ballot produced "Substitutes" and Desertion.

40. In another aspect,—that of securing the services of the person chosen by it—the Ballot was unsuccessful. The principle of substitution led to this result,—that few *but substitutes* were to be found in the ranks. The evil did not, however, terminate here; for the temptation to procure another high Bounty by another substitution led to a large amount of desertion.

These results shown in the Army of Reserve, 1803-4.

41. The returns laid before Parliament under the Army of Reserve Act showed that out of the 45,492 men raised for the United Kingdom in the years 1803-4, by the operation of the Ballot, 40,998 were substitutes, and further that in one year the force was reduced by desertion and death by 8106 men:[1] figures which induced Mr. Pitt to modify the Ballot in the measures that he subsequently introduced for recruiting the Army.[2]

Again on the Militia Ballot, 1807.

42. Similar results were shown at a later period, when the Militia ranks were filled up by the Ballot, under the 47 Geo. III. (Session 2), c. 71. From Returns laid before Parliament in March, 1808,[3] it appeared that, of 26,085 men, raised since the 14th August preceding, 22,956 men were substitutes, only 3129 being principals, and that the

[1] 59 Com. Journ., p. 296. [2] 2 H. D. (O. S.), p. 594.
[3] 63 Com. Journ., p. 614.



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tax paid for substitutes varied from 45*l.*, in the county of Monmouth, to 10*l.*, in the Isle of Wight.

Ballot superseded by Recruiting by beat of Drum.

43. Therefore the Ballot for the *General* Militia was, from this period, partially, if not wholly, superseded, its ranks being recruited by beat of drum; and in the interval between 27th May, 1809, and the 24th March, 1813, the total number of men thus raised for the Militia amounted to 46,030.[1] However, what has been written is rather in anticipation of a subject that might perhaps have been more properly considered hereafter.

Militia changed from a Defensive to an Offensive Force.

44. During the progress of the Peninsular War the essential feature of the General Militia, as a purely defensive force, was broken in upon. The Officers and men were allowed, in the first instance, to volunteer into and become Officers and Soldiers *of the Army;* secondly, to serve *as Militia* with the Army abroad, or alone out of Great Britain, as in Ireland or the Channel Islands. The Militia was made less attractive than the Army with regard to pay; as Parliament did not see fit to extend the increase given to the Army in 1806 to the Militia, but, to prevent it, passed the 46 Geo. III., c. 40.[2]

A.D. 1806.

Militia Pay not increased.

45. Mr. Pitt's policy was, as we have seen, to make the

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[1] See 69 Com. Journ., p. 635. The Total is made up of

| | |
|---|---|
| English .. .. .. .. .. | 24,517 |
| Scotch .. .. .. .. .. | 2,843 |
| Irish .. .. .. .. .. | 18,670 |

[2] During the same period a change was made in the channel or machinery through which the pay of the Militia was issued. Prior to 1809 the Disembodied Militia received their pay and allowances from the Receiver-General of Land Tax for each County, according to the rate of allowance and scale of pay set out in the Annual Pay and Clothing Act, and according to the Establishment prescribed by the General Militia Act; the issue being made to the clerks of the regiments appointed by each Lord-Lieutenant or the Commanding Officer. The Embodied Regiments received their pay from the Secretary at War, and the issues of the Receiver-General ceased (41 Geo. III., c. 43. sec. 10.); but in 1809 the 49 Geo. III. c. 87, directed that the pay and clothing of the General Militia (when disembodied), and of the Local Militia, were to be issued by the Secretary at War, and all later Acts have been framed on the same plan.

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Militia the recruiting ground for the Standing Army. Having initiated it in 1798 and 1805, when the numbers of the Militia were above the legal quota, the same policy prevailed throughout the Peninsular War. All the statutes passed for this object were more or less framed on the same model, and the provisions of the first Act —45 Geo. III., c. 31—were in the outline as follows: —

Mr. Pitt's Policy was to recruit the Army from the Militia.

46. Each Regiment of the Line that was to receive recruits had, by an Order in Council, some Militia regiment attached to it, and the number of soldiers required was then notified to the Commanding Officers of the Militia. The Bounty was 10*l.* 10*s.*; but that the discipline of the Militia regiments might not be broken down, the Commanding Officers had to some extent the control of these enlistments. If four-fifths of the required number were willing to enlist, no further number was to be taken, and the Colonel could by ballot or otherwise select one-half of the men that were to remain in his Regiment. The Militia men could not go at any time *they* chose, but only at certain intervals when the books for recruiting were open. The Commanding Officers had also the power of refusing to discharge Militia men on sufficient reason assigned to the General Officer.[1]

Outline of Statutory enactments for Recruiting from the Militia.

47. The result of this measure appears to have been successful, though not to the full extent anticipated by the framers of the Act. They permitted:[2]—

Results of the Act of 1805.

| | | | |
|---|---|---|---|
| 704 Sergeants<br>704 Corporals<br>14,923 Privates | to volunteer; but only | 170<br>295<br>10,696 | did volunteer to join the Army. |

However, men were urgently needed, and the subsequent Acts had a more direct reference to the absolute requirements of the Army than to the effect which such measures would have on the Militia.

48. In 1807, therefore, Lord Castlereagh introduced a Bill—

[1] Although the Act did not receive the Royal Assent till April 19, the regulations to put it in force were issued on the 13th.—Vol. i. of Army Regulations, pp. 62-4.

[2] 61 Com. Journ., p. 636, and 60 ib., p. 667.

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which on 13th August received the Royal Assent as the 47 Geo. III. (Sess. 2), c. 57,[1]—to permit men to enlist, so that three-fifths of the Regiment was left to serve in the Militia. The allowed quota for the Army from the British Militia was 27,639 men. Up to the 24th February, 1808, 23,684 of that number had entered the Army,[2] and from the Militia of the United Kingdom 30,883 men were ultimately obtained.[3]

Same Policy again pursued in 1807.

49. The Ballot was the means which Lord Castlereagh first resorted to for filling up the ranks of the Militia rendered vacant by these enlistments. In this and in other respects his was a reversal of Mr. Windham's policy, inasmuch as the Ballot had been suspended from July,[4] 1806, that the Army might be filled up by ordinary recruiting. It was, however, deemed necessary to bring the Ballot again into operation, under certain conditions laid down in the 47 Geo. III. (Sess. 2), c. 71, under which the Militia was to be completed and increased.

Ballot to be again resorted to.

50. This Act named a definite period within which the men required were to be raised. If this number of men were not balloted and enrolled within the period, each parish making default was fined 60*l.* for each man deficient, with a return of three-fourths of the fine within a month, of one-half within two months, and one-fourth within three months, if within either of those periods a man was produced by the parish. When all the men were raised, or the periods for raising them had expired, the Ballot (subject to the power in the Crown of ordering a Ballot to supply *vacancies* in the Militia) was to cease until the 1st January, 1810. Persons balloted and failing to attend or to find substitutes, were fined 20*l.*, and this fine, or part of it (not being less than the half average price of a substitute), might be paid to the man next balloted and serving for the previous default. If not so paid, then one-half part of it was to be paid to the parish towards the expenses of providing volun-

Outline of Enactment for filling up the Militia.

[1] Chap. 55 of the same Session related to the Irish Militia.
[2] 63 Com. Journ., p. 665. [3] 65 ib., p. 600. [4] 46 Geo. III., c. 91.

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teers, and the other half to the Receiver-General. Effective Volunteers and Yeomen were, but persons enrolled under the Training Act were not, exempt from the Ballot, nor were half-pay Officers, unless they had tendered their services in the Militia or Volunteers as Officers.

51. The plan was a return to the Ballot without escape, except by payment of a fine double the amount that had been before levied. Nothing, therefore, could justify the expedient but the extreme urgency of the case, and upon that ground Lord Castlereagh[1] did justify it. "If," said he, "it was meant to have a *bonâ fide* addition to the amount of our public force, it was perfectly illusory to depend on the ordinary recruiting; in truth, therefore, the question came to this,—what measures *must* be resorted to to raise the Army to the standard to which circumstances imposed the necessity of its being raised? Certainly by some sort of compulsion. No desirable species of compulsion had ever occurred to any Administration unconnected with the Ballot. If it were allowed that compulsion must be resorted to, and that compulsion must be founded on Ballot, our choice was narrowed to a very limited extent." The effect was to increase the penalty for not serving.

52. He then explained that there was but the simple alternative of raising men *by ballot*, for the Army direct or for the Militia first, and then for the men to volunteer from the Militia into the Army. "In every point of view it seemed preferable to raise men for the Regular Army from the Militia, than to raise men for the Regular Army by a Ballot. It was a mere anticipation of a burthen which must be imposed; it was a cheaper method; it was one by which better Troops would be procured; and it would ultimately restore to the recruiting market that monopoly which he was desirous that it should possess." Extreme necessity only could justify this course.

53. Granting, therefore, that the Ballot was an evil, he desired to confine its operation to within a limited period of time, and when it was in operation to raise men, "not only as a cover for the deficiency and the Ballot limited in duration.

[1] 9 H. D. (O. S.), p. 862.

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waste, but also such a number of supernumeraries (for whom the Officers in the Militia would be sufficient), as would render any further Ballot for two or three years wholly unnecessary; so that a security would be given to the Line that a continual Ballot would not exist in competition with their ordinary recruiting."

The Act recognised the principle that the Militia should be raised at the cost of the Imperial Revenue.

54. The Act also differed from the earlier ones by admitting the principle that has since been fully adopted, viz., that the Militia should be raised at the expense of the whole community, and not of a particular class, in fact out of Imperial rather than Local funds. In the earlier statutes the Militia laws had brought a contribution into the Imperial Treasury from Local rates, as in the instances of penalties from persons balloted and not serving; from parishes or districts bound to furnish men, and not providing them;[1] but by this Act the Treasury, without waiving these penalties, undertook to provide 12*l.* 12*s.* for each Volunteer[2] raised by beat of drum, and 10*l.* 10*s.* to each person balloted and serving before the 1st September, 1810, hoping, as Lord Castlereagh explained to the House, that "when Country gentlemen and Militia Colonels should find that the expense was to fall on the public, and not upon the counties, their local exertions would make the measure successful."[3]

Results of the Act.

Lord Castlereigh's speech.

Bill for Volunteering from the Militia.

55. Lord Castlereagh spoke of these measures in Parliament at a later period as eminently successful:— "No[4] measure had ever turned out so completely beneficial as that introduced in the year 1807, by which it proposed to increase the Army by encouraging transfers from the Militia, to the extent of 28,000 men. The addition which this measure actually produced was upwards of 27,000 men within twelve months.

[1] See 47 Geo. III., c. 71, sec. 19. Up to the 24th June, 1808, the sum of 14,958*l.* had been paid for Fines under the Militia Act (63 Com. Journ., p. 628), and 70,611*l.* 6*s.* 8*d.* for Fines under the Local Militia Act, to the Receiver-General for the Treasury (65 Com. Journ., p. 610).

[2] 49 Geo. III., c. 53, secs. 5-14, 15, 18.

[3] 12 H. D. (O. S.), p. 161.

[4] 12 H. D., pp. 159-60.

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The levy of Militia, in order to supply the place of 28,000—by the Bill of 1807 permitted to volunteer into the Line—pressed heavily on the country, but it showed what the country was capable of doing when called on for exertion. Parliament had demanded 45,000 Militiamen from Great Britain and Ireland; and (thanks to the zeal and activity of the different counties) within six months after that demand 41,500 joined their respective Regiments." The returns[1] laid before Parliament show that up to the 24th February, 1808, of the 47,462 men required for the Militia, 31,344 had already joined the force since the commencement of the Ballot, and that 6087 men had been raised in England, and some men in Ireland, who would join in due course.

A.D. 1809. Measures to recruit the Army and Militia.

56. After the interval of two years, measures of the same character were again resorted to, with some slight modifications. The 49 Geo. III., c. 4,[2] which received the Royal Assent on the 13th March, 1809, provided, firstly, for raising men for the Militia by beat of drum, as Volunteers, and, *on that failing*, by the Ballot.

Outline of 49 Geo. III., c. 4.

57. Thus it enacted that before the 1st October, 1810, a number of Militiamen equal to one-half of the original quota should be raised in Great Britain, and that until the 1st June, 1810, they were to be raised by beat of drum. The Bounty to a Volunteer was 12 guineas, but no man having more than one child born in wedlock was to be accepted as such. For the men shewn to be deficient on the 1st April 1810 the Ballot might be put in operation, and every parish, for each man deficient on the 1st October, 1810, was to be fined 40*l.*, with a proportionate return (under 51 Geo. III., c. 20, sec. 21) for men raised afterwards within a certain period. The Ballot was to be suspended after the men were raised, until the 1st January, 1812, and then by 51 Geo. III., c. 20, sec. 22, until the 1st July, 1813.[3]

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[1] 63 Com. Journ., p. 665.

[2] 13 H. D. (O. S.), pp. 538, 803, 817.

[3] 1809, June 24, W. O. Instructions; vol. i. A. R., p. 154; ib. p. 167; vol. ii. ib., pp. xii., 702-9. The Act was amended (1) by the 50 Geo. III., c. 24, princi-

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58. These Acts—for one was passed for Ireland—up to the close of the year 1809, brought 18,430[1] men into the Army, and 6671 as Volunteer recruits into the British Militia, leaving on the 24th January, 1810, a deficit of 18,512 men to be provided on the 15th February.[2] Having regard to a fact recorded in the Annual Register,[3] as to the price of substitutes in February, the strictures of Lord Rosslyn on the Bill were not altogether erroneous.

Results of the Act.

59. "The Bill," he said, "provided the men might be raised by enlistment, at a Bounty of 12 guineas, any time *before* June, 1810; and if the quota should not be so raised, then it provided that the ancient method of Ballot should be resorted to, so that all deficiencies should be supplied before the October following. Of course it was well known there was 20*l.* fine on the man balloted, and 10*l.* more was permitted by way of Bounty; and if it should happen that the substitute was not procured before October, there was an additional fine of 40*l.* on the county, so that it must be evident the Bounty *after* June would be from 30*l.* to 70*l.* a man. The consequence, from the nature of human reasoning, must be that every man will decline accepting the Bounty for *enlistment* knowing it would be much better for his interest to wait till this period should elapse."[4]

Objections to the Provisions of the Act.

60. Hitherto the action of Parliament had been spasmodic, taking suddenly large numbers of men from the Defensive to the Offensive forces of the Kingdom; but in 1811 the measures of the Government were directed to different objects. They proposed to make the Militia yield a

Measure of 1811.

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pally in applying the provisions of the Militia Act to the raising of Volunteers for the Militia, and (2) by 51 Geo. III., c. 17, rendering certain doubtful Acts valid, and indemnifying the persons concerned therein. Chapter 51 of the same Session contained similar provision applicable to the Irish Militia, and by c. 120 the laws relating to the Irish Militia were amended and consolidated.

[1] 65 Com. Journ., p. 600. [2] Ib., p. 602.

[3] 1810, Feb. 15. "60*l.* was last week paid at Plymouth for a substitute for the Militia—one man went on condition of receiving 4*s.* per day during the War, and another sold himself for 7*s.* 3*d.* per lb." 52 Ann. Reg., p. 282.

[4] 14 H. D., p. 438.

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constant annual supply of men to the Army, and to recruit itself by beat of drum, and in the next place to enlarge the *area for the service* of the Militia of each Kingdom.

61. The first object was carried out in reference to the British Militia by the 51 Geo. III., c. 20, to which the Royal Assent was given on 1st April, 1811.[1] The Act purported to provide a permanent supply of men for, and to allow a certain proportion of the Militia annually to enlist into, His Majesty's Regular Forces, under certain restrictions, and it authorised His Majesty annually to accept the services of 5714 English, and 1142 Scotch Militiamen in such Regiments of the Army as His Majesty should appoint. On the 1st February in each year the number of men required was to be certified, and apportioned amongst the Militia, so that not more than one-seventh of the original quota should be taken. To meet this deficiency, men for the Militia were to be raised as Volunteers, by beat of drum, at Bounties not exceeding 12 guineas, and one-fourth might be boys of the age of 14 years or upwards, and, if this recruiting failed, then as Conscripts by the Ballot; Men might also be raised as supernumeraries, to supply future vacancies caused by enlisting, and by 53 Geo. III., c. 81, sec. 6, these supernumeraries were to be raised to one-half of the quota, and any men in excess of the Militia Establishment were allowed to enlist into the Army. The enlistment of the Local into the Regular Militia of the same or an adjacent county was also sanctioned.[2]

First to secure an annual supply of men from the Militia.

The principle of 51 Geo. III., c. 20.

62. Lord Lansdowne, on the third reading of the Bill,[3] strongly objected to the Ballot, which, in the year 1813, would fall on a population diminished by 480,000 (240,000 Volunteers and Local Militia in service, and the same number whose term of service would then have expired), and become a grievous burden upon the residue of the people. As the object of the measure was to supply the Regular Army, he thought it unjust that particular

Ballot objected to.

[1] Amended by 53 Geo. III., c. 81, and continued in force by 54 Geo. III., c. 1. Orders under vol. ii. of (MS.) Army Regulations, p. 113; vol. iii. ib., pp. 43-6, 94-5, and 113; 1812, vol. iv. ib., pp. 27, 34; 1813, ib., pp. 123, 192; 1814, vol. v. ib., p. 67. [2] 19 H. D. (O. S.), pp. 193-4, 735-45. [3] Ib., p. 745.

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individuals should be heavily taxed, instead of the funds being supplied by the State for this purpose. However, he failed to carry a Clause to suspend the Ballot, and this Act and another relating to the Irish Militia, appear to have contributed for the year 1811[1] nearly 11,000 men to the Regular Army, and for the year 1812,[2] 9903 men, the Army being recruited from other sources, with a somewhat larger supply of men.

63. The second object was carried out by the Interchange Act. The Militia were bound to serve as Marines on vessels lying in the Harbours of the Kingdom,[3] but there was no power of sending the British Militia to Ireland, or *vice versâ*. This loss of power sustained by the United Kingdom, in having *three distinct* instead of *one common* National Militia, had been repeatedly pointed out in Parliament; but "the principle of a common Militia for the Empire, however obvious in policy, must," said Lord Castlereagh, "rest for its accomplishment on the growing sense of its importance. When the Militia system was extended to Scotland in the year 1797, it was not at first thought prudent to hazard the measure, by extending the services of the Scottish Militia to England, and it was not till a subsequent year that the conditions of the service of the Scottish Regiments were assimilated to those of the English Militia. It is not to be wondered at, therefore, if the extension of the principle to Ireland did not immediately follow the Union."[4]

The area of Militia service extended.

64. In 1798 some portion of the English Militia served in Ireland, for the suppression of the Rebellion, and though, as we have seen, the Bill was much opposed, the Ministers in 1811 thought that the time had arrived when the principle of interchange might be accomplished, with the general concurrence of the British and Irish Militia. They accordingly proposed to Parliament a Bill, ultimately passed as the 51 Geo. III., c. 118.[5]

Interchange with Ireland.

65. As a *compulsory* enactment it extended only to the

[1] 67 Com. Journ., p. 669. [2] 68 ib., p. 771. [3] Bk. I., p. 181.
[4] 19 H. D. (O. S.), p. 218. [5] Ib., p. 217.

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Militia that might *thereafter* be raised, and the Act[1] provided that no Regiment should serve in Ireland or Great Britain for longer than two years successively, and that at any one time not more than one-fourth of the British Militia should serve in Ireland, nor more than one-third of the Irish Militia should serve in Great Britain; and, having once served its period, should not be again liable to serve until the expiration of six or four years from the termination of the last period of service. The latter provisions did not, however, apply in cases of invasion or rebellion.

Provisions of the Interchange Act.

66. The Bill was introduced in the Commons on the 17th May, 1811, and strongly opposed during its progress through Parliament. Upon the *first* reading, many objections were urged by Earl Temple,[2] and not the least important that which was raised by Mr. Wilberforce in 1798, viz., that the Bill would alter the character of, if not destroy, the Militia. Upon constitutional grounds, therefore, he objected to the measure,—"the Militia was a species of Military force that might be said to be independent of the Crown: it was a force independent of the Standing Army."

Opposed on various grounds but chiefly as altering the character of the Militia.

1st Reading.

67. Upon the second reading the same objection in another form was stated by other opponents. "It would," Lord A. Hamilton[3] said, "prevent qualified persons from accepting Commissions in the Militia. A gradual decrease in *qualified* Officers had been going on year after year, and the present Bill would go to sweep off all those below the rank of field officers. Formerly balloted men bore a great proportion to substitutes in the Militia, now they were not as one to ten. If we were neither to have Officers nor men in this our Constitutional force, in the old and Constitutional form, it would be better at once to annihilate it entirely." "If," said Mr. C. W. Wynn, "this species of force was only to retain the name, and to lose the essence, all the advantages resulting from it must fall to the ground. By the Bill the alternative was put to every Officer in the Militia either to go to Ireland when called

2nd Reading.

[1] Amended by 51 Geo. III., c. 128, as to the allowances of wives and families of Volunteers serving in Ireland, and 54 Geo. III., c. 10; and see c. 114 of the same Session relating to Militia of the Stannaries.

[2] 20 H. D. (O. S.), p. 201.

[3] Ib., p. 293.

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on, or to resign. He must protest against the measure, as being the last step in the conversion of the Militia Force of the Country into one of a very different description."[1]

A.D. 1813.

30,000 men to be taken from the Militia,

68. The last draught taken from the Militia had an entirely Novel feature grafted upon it by the 54 Geo. III., c 1 (which received the Royal Assent in November, 1813). Under this Act the Crown was authorised to take 30,000 men, not reducing the strength of any Militia Regiment below one-fourth of its existing strength, and these men had the option to serve *as Militia* or as Soldiers. Further, the Militia Officers were to have Commissions in the Army given to them in proportion to the number of the men leaving home for Foreign service in the Regular Army.

with option to serve either as Militia or with the Army.

The Provisions of the 51 Geo. III., c. 17.

As to the men.

69. As to the Men, the Bounty to each Volunteer was to be 8 guineas, and he was to "serve in the Militia in any part of Europe during the remainder of the war, and until the expiration of six months after the termination thereof, to be reckoned from the ratification of any definitive Treaty of Peace, unless sooner discharged."[2]

As to the Officers.

70. As to the Officers; in the first place, three Field Officers with 900 Privates, two Field Officers with 600 Privates, and one Field Officer with 300 Privates, or three-fourths of the number of private men actually serving in any such Regiment, Battalion, or Corps of Militia, might go with the men. In the next place, if Field Officers should not offer to extend their services with the men, his Majesty might give the rank of Field Officers to any Captains in such Regiments, Battalions, or Corps of Militia, who might offer to extend their services, and a proportion of other Officers, non-commissioned Officers and drummers, might go with the men.

Militia Battalions.

71. The Crown was authorised to form the Militia into provisional Regiments or Battalions; and if a Field Officer[3] had volunteered for extended service, then

[1] The subsequent opposition was mainly rested on the religious disability of the Irish Militia when serving in this country. 20 H. D. (O. S.), pp. 332, 366, 455, 643.

[2] Secs. 1 and 2.

[3] See 54 Geo. III., c. 20, as to further appointment of Officers.

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a Field Officer of Militia should have the chief command of such provisional Regiment or Battalion; but while on service out of the United Kingdom no Militia Officer should rank with the Officers of the Regular Army higher than a Lieutenant-Colonel. Should not a sufficient number of Militia Officers volunteer, his Majesty was authorised to appoint other Officers without reference to property qualification. On leaving the United Kingdom, and until their return, the Militia were to be subject to the Mutiny Act in like manner as the Regular Forces, and the Officers of both Forces were to sit on Courts-Martial. In all other respects (than as mentioned in the Act) they were to remain subject to the Militia Laws.

Advantages to Volunteers serving as Militia with the Army.

72. The advantages of this arrangement to the Militia were thus explained to the House:[1]—"The Officers," said Lord Castlereagh, "would be considered as still belonging to the Militia of their county; but they would return home with this advantage,—that having gone abroad at a critical period they would be entitled, on being disembodied, to the half-pay of the Army. The Men would go as, and continue to have all the advantages of, Militiamen. A man would be enabled to serve his country abroad without leaving his wife in want at home. In England, indeed, all descriptions of people were entitled, in exigency, to relief from their parish, but in Ireland and Scotland there was no parish support. It was, therefore, proposed that this class, who were merely a disposable Militia, should continue to possess all the advantages of Militiamen, and that the Officers, as already stated, should have also the advantage of half-pay."[2]

To enlist into the Army as Soldiers.

73. What might be termed the ordinary method of recruiting from the Militia was not abandoned; for, to encourage enlistment into the Army, his Majesty was at liberty, under the 12th Section of the Act, to accept Militia Companies of not less than 100 men, and to grant to the Officers, non-commissioned Officers and men, *Army* rank, altering at once their status from the Militia to the Army. "He," Lord Castlereagh, "thought it advisable not to check the dis-

[1] 27 H. D. (O. S.), p. 90.

[2] See note [2] to par. 11, *ante*.

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position which prevailed in the Militia of entering *absolutely* into the Line, because in no wise could they be so usefully employed as in the Line. In the judgment of the Commander-in-Chief no injury whatever would accrue to the Army by allowing the Officers of the Militia, up to the rank of Captains, to pass into the Line, and to receive half-pay, giving them this further advantage,—that after a certain time of service they should be considered as Officers having Permanent Rank in the Army corresponding to the rank which they held in the Militia. The number admitted to those advantages would be in proportion to the number of men who went with them into the Army: one hundred men to admit one Captain, one Lieutenant, and one Ensign."[1]

Result of the Act.

74. Volunteering under this Act was stopped on the 25th December, 1814.[2] During its operation 11,177 men appear to have enlisted into the Regular Army, under the 12th section[3]; but no information that I can trace was laid before Parliament as to offers of service under the 1st and 2nd sections of the Act. In the Appendix will be found a table showing the total of casualties of natural-born subjects of the Crown, for each year, from 1803 to 1813, and of the recruits that joined the Army.[4] Of the 249,851 men raised, the Militia contributed 99,755 up to September, 1813, and subsequently between that date and the 25th December, 1814, 11,177 men. Of the expense of raising men by the Militia no precise information appears to have been laid before Parliament. A *trained* man from the Militia was, no doubt, worth more to the Army than an *untrained* man from the Streets. He neither wanted so much instruction before he was ready for Foreign Service, nor was there the same risk of his desertion. When the expense of the system was urged against the arrangements of 1813, Mr. Addington[5] offered this explanation:—"As to the comparative expense of recruiting direct into the Line, or through the medium of the Militia, he could assure the House that

General results of Recruiting from the Militia. 1. As to numbers.

2. As to cost.

[1] 27 H. D. (O. S.), p. 89.
[2] 71 Com. Journ., p. 681.
[3] 69 ib., p. 638; 70 ib., p. 607.
[4] Appendix LXXIII.
[5] 24 H. D. (O. S.), p. 1171.

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the difference was inconsiderable, notwithstanding the double bounties. He had made out an estimate from authentic documents; and he could demonstrate that in no instance did the difference exceed between 4*l.* and 5*l.* per man, and that after the first volunteering from the Militia the expense was nearly equal."

75. At the close of the war, the Militia, after disembodiment, was left with little encouragement from Parliament, and consequently it gradually fell into decay. In 1834—the ballot having been previously suspended —the late Mr. Hume brought the subject of the expenses of the Militia before the Commons, showing, that since 1817, upwards of 8,000,000*l.* had been expended upon the Militia and Yeomanry forces. This movement led to the further reduction of the Militia;[1] for in the next session, the 5 and 6 Wm. IV., c. 37, was passed, and the Annual expense ultimately dwindled down to 83,000*l.*[2] paid to the regimental staff.

Gradual decline of the Militia force down to the year 1852.

As to the third period—

76. In the year 1852, after a refusal,[3] by the House of Commons to re-establish a local Militia, to be raised by ballot, Parliament gave its assent to the establishment, for England, of a general Militia of 80,000 men, to be raised by Voluntary Enlistment. Other acts were subsequently passed for the establishment of a separate Militia for Scotland and Ireland, but as the differences to be traced in these several enactments are not of sufficient importance to record in this work, the English Militia Acts will form the basis of the few observations that will be made on the subject.

Re-formation of the Militia Establishment in 1852.

77. At the outset, the reader's attention must be drawn to the fact that the legislation of 1852, and of subsequent sessions, must be regarded as Amendments upon the

Militia Act of 1852, and of later

[1] 25 H. D. (3), p. 932; 27 ib., p. 1155; 30 ib., p. 176.
[2] 120 H. D. (3), p. 275.
[3] 119 H. D. (3), pp. 550, 838, 849-74.



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Sessions, amending Acts to the General Militia Act.

then existing Militia Statutes, rather than independent Substantive Enactments—in truth, as the graft of the Volunteer system upon the statute law framed to raise the Militia by Ballot.

The principal provisions in the New Militia Statutes.

78. The distinctive feature of the 15 and 16 Vic., c. 50, and later Acts, is the establishment of a Volunteer Militia recruited at a bounty not exceeding 6*l.*, to be paid by the Imperial Treasury,[1] the men—according to a quota settled by the Crown,—being raised from each county, or failing any county, then in one immediately adjacent thereto. This is the principle of the Act; but that no County may, by indifference, escape from Militia service, the Crown—upon certain emergencies[2]—has the power of raising the quota by ballot out of the county from the men between eighteen and thirty years of age, at the cost of the county or district under the provisions of the General Militia Act.

1. Voluntary settlement, with power to enforce service by Ballot.

2. The Militia organisation entrusted to the Crown.

79. A comparison of these Acts with the General Militia Act will show another feature not less important, viz., the greater confidence evinced by Parliament in the Crown by the late over the old Militia Statutes. Thus, while the 42 Geo. III., c. 90, declares all the minutiæ of military organization on the face of the Statute, the 15 and 16 Vic., c. 50, and later Acts, trusts a very large discretion to the responsible ministers of the Crown, viz., the Secretary at War and the Secretary of State, as to the raising of the men,[3] the formation of regiments,[4] and the annual training of the force.[5]

3. The property qualification relaxed in favour of Officers from the Regular Army.

80. There is also some relaxation in the Constitutional rule of a property or landed qualification required of Militia officers, and greater encouragement given for Line officers on half-pay to serve in the Militia. As to the qualification, it may be *personal* property[6] or landed estate *in any part* of the United Kingdom;[7] and as to officers formerly in the Army, (1) a Captain, or one of higher rank, or a subaltern of five years' standing needs no

[1] 120 H. D. (3), p. 278.
[2] 23 & 24 Vic., c. 120, sec. 7.
[3] Secs. 11, 13. [4] Sec. 25. [5] Secs. 26 & 27; 17 & 18 Vic., c. 105, sec. 55.
[6] 18 & 19 Vic., c. 100, sec. 2. [7] 17 & 18 Vic., c. 105, sec. 31.

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property qualification for the rank of captain in the Militia; and (2) Field Officers in the Militia may receive their half-pay.[1]

4. As to passing from the Militia to the Regular Army.

81. The 15 and 16 Vic., c. 50, contained no provision enabling men to enlist from the Militia into the Line, and consequently, during some period of the Crimean War, the punishments and penalties enacted by the General Militia Act, against enlisting from the Militia, were in force, and, to recover these penalties, prosecutions were instituted. A partial amendment of the law was made by the 17 and 18 Vic., c. 105, sec. 42; but the liberty to enlist was not put upon the present footing till the year 1860, when the 23 and 24 Vic., c. 94, sec. 17, was passed.

5. The area of Militia Service enlarged.

82. What Lord Castlereagh felt unable to do, the late Lord Herbert accomplished, viz., formed one common National Militia liable to serve in any part of Great Britain. This change in the law was made in the year 1859, and the same Act[2] enabled the Crown to accept the voluntary service of the Militia in the Channel Islands.

Service of married men in the Militia.

83. Although the area and duration[3] of the Militia service are both enlarged,—and hence the Militia are more liable than heretofore to be called into embodied service, and to be removed, not only from the county but also from the kingdom,—neither the Act nor the regulations made under it by the Secretary at War, contain any absolute prohibition (similar to that found in the General Militia Act) against the voluntary enrolment of a married man with more than one child, in the Militia. The impolicy of having such a class of recruit does not admit of controversy, and the statutory prohibition contained in the General Militia Act has never been relaxed by Parliament. However, it was overlooked by the framers of the Act of 1852 and of the regulations of 1854; for the enrolment of such men came to the knowledge of Parliament in March, 1855, and Circulars were subsequently addressed to the several Lords-Lieutenant, ordering their discharge.[4]

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[1] 15 & 16 Vic., c. 50, sec. 5. [2] 22 & 23 Vic., c. 38, sec. 4. [3] Chap. III., par. 47.
[4] Circular of Lord Panmure, 23rd and 27th March, 1855; 138 H. D. (3), pp. 130, 396.



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84. The county expenses are now limited to the Ballot (where enforced), and to the providing of store-houses for the arms of the Militia, all the other charges being borne by the Imperial Treasury. Increased legal facilities have been given to Counties to acquire sites of land for Store and Barrack purposes, but the means which the Crown has of obliging the County to provide for the safe and proper custody of Militia arms or ammunition is not clear.[1]

As to Militia charges that are now borne by the county.

85. Though Parliament gave no express sanction for the Crown to enlist Militiamen into the Line during the Crimean war, an irregular system sprung up, interfering, as some thought, with the morale of the men. The absence of a parliamentary enactment similar in principle and detail to any of those Acts that were passed in the Peninsular war, is not explained by the fact, that the Secretary at War gave bounties to encourage such enlistments, or that it appears from Parliamentary papers that between 25,000 and 30,000 passed into the ranks of the army in the years 1855-6.[2]

Militia enlistments during the Crimean War.

86. Parliament did, however, give its express sanction to the voluntary offers of three-fourths of the actual strength of any Militia regiment to serve abroad out of the United Kingdom, and an Act[3]—framed on the model of the 54 Geo. III., c. 1—was passed for that object. In the former Act,[4] the service was in any part of Europe, and for a period conterminous with the war—(indeed, for six months after peace had been declared)—but, by the 18 Vic., c. 1,[5] it was for a *specified* place, and for a term of five years *only*. The Act further provided that no Militia officer out of the

Foreign Service of the Militia.

[1] 17 & 18 Vic., c. 105; 18 & 19 Vic., c. 57; 134 H. D. (3), p. 1414; 135 ib., p. 831; 130 ib., p. 656.

[2] The Parliamentary Return of 3rd March, 1859 (233), gives the number of Militia that joined the Army in the year 1855 at 19,290 men, and the Return of June 1860 (380), at 17,864 men, besides 979 for the Marines. The bounty was 8*l.* for the Infantry, and 9*l.* for the Marines (380). For the same bounty 27,243 men joined the Army from other sources than the Militia. In 1856 the numbers were 10,796 from the Militia, besides 622 for the Marines, and 4763 from other sources.

[3] 18 Vic., c. 1; 136 H. D. (3), pp. 241-303, 464-494, 685.

[4] Sec. 2.

[5] Ib.

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kingdom should rank with the officers of the Regular Army higher than as a Lieutenant-Colonel of the Militia.[1]

87. The services of the Militia as a Reserve Force during the present century, have now been enumerated, and the relationship in which the Militia stands towards the Regular Army is that of a force subsidiary to it.[2] Hitherto it has been the policy of the State to keep the Reserve Forces under the Command of men of great estate and influence; and it is a fact not to be overlooked, that *they* derive their authority over the Militia from the *same* statute[3] that declares the right of the *Crown* to govern that force. To abolish or supersede an officer of such Constitutional importance, is not a Policy lightly to be entered upon, though the problem no doubt presents itself, how with a Separate Command over each force the Regular Army and the Militia can be blended together. In time of war, the General Officer of the Army may command the Militia—and it has been shown how the Army may be first rapidly and then annually recruited from the Militia.

Position of the Militia towards the Regular Army.

88. Both the Army and Militia are now recruited on the Voluntary principle from the same social class, and the right appropriation of men for each service is the object to be attained. The competition in the recruit market of the Militia and the Regular Army, may become an evil; but if this can be avoided and the population will yield an ample supply for each force, then the Militia Establishment could be best used—for the purpose of its reorganization in 1754, viz.—to train Officers and Men and return them at stated intervals into Civil life. The Militia statutes, as they were then framed, gave little encouragement to re-engagements. In time of peace, each re-engaged man not only fills the place that could be better occupied by a recruit, but at the present time he occasions a large increase of expense. In bounty alone he receives 14*l.* 10*s.* for nine years' service, and at the end of that term he would probably be too old to enter—if his services were required in—the Army.[4]

Both recruited by Volunteers from the same social class.

[1] Sec. 7. [2] Appendix LXXIV. [3] Chap. III., pars. 9, 10.
[4] See Note 1 to Appendix LXXV.

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89. No doubt the increased facilities of transport from one to another part of the kingdom—the fact that all the Militia forces are trained at nearly the same period in each year—the possession of Camps for the accommodation of large numbers, and the present similarity of the two forces, are circumstances that offer an encouragement to the effective training of the Militia with the Regular Army. The association of the offensive and defensive forces in time of peace would tend to facilitate their co-operation in the time of war. To give complete legal effect to such an arrangement, it would be expedient to extend the provisions of the 42 Geo. III., c. 90, sec. 111., to the time of training and exercise; for, as the law now stands, a General Officer of the Army has as little power of command over Disembodied Militia, as a Lord-Lieutenant has over troops of the Regular Army. The case of Militia Volunteers[1] attached to any Regiment of the Regular Army, for instruction, is specially provided for, but not the case of a Militia regiment serving with or in a Division of the Regular Army under the Command of a General Officer.

Training the Militia with the Army in camps of instruction.

90. The "establishment, organization, government, and direction of the Militia" formed the subject of inquiry by Royal Commissioners appointed in July, 1858, and their Report was presented to Parliament early in the session of 1859. Such of their recommendations as were adopted by the Government, and needed statutory authority, were carried out by the 22 and 23 Vic., c. 38, and the 23 and 24 Vic., c. 94. The Militia also came under the notice of the Royal Commissioners appointed in May, 1866, to enquire into recruiting the Regular Army. Their Report was made in October of the same year, and presented to Parliament in the session of 1867. After shewing that the sources of supply from the Army would form but a small reserve force, their Report proceeds thus:—"We are of opinion that it is to our Militia we must look for the solid and constitutional reserve of the country, and we would earnestly recommend that more attention should be given to its organization; that its numbers

A.D. 1859-60. Reports on the Militia.

A.D. 1866-7.

[1] 17 & 18 Vic., c. 105, sec. 53; 31 & 32 Vic., c. 76, sec. 12.

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should be maintained up to the full legal quota; and that, so far as is possible, the period for drilling the recruits should be more extended."

91. Acting upon these recommendations, the Ministers of the Crown increased the Militia Establishment, and, as an encouragement to the men, gave to the Militia service the same addition to their pay that in the same session was granted to the Regular Army. The result of these measures has not been laid before Parliament, but a summary of the last Return,[1] showing the Training Establishment of each Militia regiment for 1867, is given in the Appendix.[2]

Present Militia Establishment.

92. The early history of the Volunteer Force is to be traced in every national emergency; for when the numbers of the Standing Army were settled at 7000 men *before*, and at 8000 men *after* the Union with Scotland, the National Policy—though not expressed—was indicated, that the people would readily defend themselves. Therefore, upon any threat of insurrection or invasion, Noblemen, Gentlemen, and the Corporate Towns, raised Regiments of Volunteers in aid of the Crown, and arms and tents were issued to them from the Ordnance Stores by Royal Order under the countersign of the Home Secretary;[3] and after the danger that threatened had been averted, the Volunteers returned the arms and tents to the Ordnance Department, and themselves to their former occupations as citizens.

History of the Volunteer Force.

93. In later years the same circumstances that rendered a larger *Standing* Army necessary, obliged the *Citizens* to remain under a more continuous training. Volunteer Corps therefore became *established* as part of the precautionary measures against a probable, not an actual, attack, and it became necessary for *Parliament* to sanction their continuance in arms. With this object, as it has been shown in a previous chapter, various statutes were passed at the close of the last century.[4]

The Establishment of Volunteers in constant training.

[1] 25 May, 1868 (300). [2] Appendix LXXV.

[3] Books of Board of Ordnance of various dates. In 1754 many towns bought Ordnance from the Crown for their own protection (p. 228).

[4] See Chap. V. par. 17 et seq.

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Volunteers originally grafted on the Militia Establishment.

94. The framers of the earlier Volunteer Acts appear to have entertained the idea of forming the Volunteer and the Militia Forces upon *one* Establishment, and with this view they provided that Volunteers should be permitted to join the Militia and serve as extra Companies.[1] Convenience and Economy both appear, at the first impression, to suggest this arrangement. The Militia, as a County force under the Lord-Lieutenant, has in each Shire a Permanent Staff, Store, and other arrangements, that *might be* made available for the training and use of the Volunteers; but the class of men constituting the file of the Volunteer Army is, or ought to be, of a higher social condition than the file of the Militia Force, and therefore to amalgamate these forces in *one* would probably be to destroy the larger portion of the *Joint* Establishment.

Present Volunteer system founded in 1802.

95. The foundation of the present Volunteer system was laid in the year 1802. Prior to the passing of the 42 Geo. III., c. 66, in that year,[2] Yeomanry and Volunteers had been established under the authority of statutes which expired with the Peace of Amiens. Upon the renewal of war, or rather in anticipation of that evil, it became necessary again to have recourse to their services, and, further, it was deemed expedient to encourage Volunteers to serve under the Act by exempting them from the Militia. Accordingly, the Act before referred to was passed, enabling the Crown to accept the services of the Corps already formed, and of others thereafter to be formed, without any limitation as to their numbers or continuance being imposed by Parliament.

A.D. 1803. Defensive force raised by Mr. Addington's Ministry.

96. In the following year the threat of invasion induced Parliament, by three separate Acts, to raise a large Defensive force—which, though raised under the threat of Conscription, may be classed as a Volunteer Force. The first Act was the Defence Act of 43 Geo. III.,

[1] 18 Geo. III., c. 59, sec. 8; 19 Geo. III., c. 76; 34 Geo. III., c. 16, 37 Geo. III., c. 3.

[2] 36 Parl. Hist., p. 655; 43 Geo. III., c. 121; 44 Geo. III., c. 18.

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c. 55, which purported to ascertain what persons between the ages of 15 and 60 years were capable of Military service, and to throw some liability upon them from which they could gain exemption[1] by serving as Volunteers under the 42 Geo. III., c. 68. The second Act (c. 82[2]) was to raise an additional Military force as "An Army of Reserve," to serve as second battalions to certain established Regiments for five years at home; and from the operation of this Act Volunteers were also exempted.[3] The third (c. 96[4]), "The Levy *en masse* Act," was to amend the first Act, and "to enable his Majesty more effectually and speedily to exercise his ancient and undoubted prerogative in requiring Military service of his liege subjects in case of invasion of the Realm," under which all men between 17 and 55 were, upon certain contingencies, to be trained to arms, and, in case of invasion, to be brought out for meeting the same or for the suppression of insurrection.

97. The members of existing Volunteer Corps were exempted from this Act, which further provided that those persons who came forward as Volunteers to serve under that Statute,[5] should enjoy an exemption from service in the Regiments of the Regular[6] or Militia Forces, to which others raised by Conscription were subjected.[7] These provisions may be thought to illustrate the expediency of keeping the Volunteers upon an Establishment separate from the Militia; for, to avoid service with the Militia or Regular Army (or from some other motive), 420,000[8] offers of *Voluntary* service were received out of 500,000 persons liable to serve.[9]

Volunteers were exempt from serving in Regiments of the Army or Militia.

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[1] Sec. 8. [2] Amended by c. 123; 36 Parl. Hist., p. 1607. [3] Sec. 7.
[4] See c. 120; 136 Parl. Hist., pp. 1623, 1678.
[5] See King *v.* Dowling, 4 East. Rep., p. 519. [6] See Sec. 54. [7] See Sec. 58.
[8] The return of Volunteers up to 9th Dec., 1803 amounted to—

380,060 for Great Britian,
82,941 for Ireland,

463,134. 59 Com. Journ., p. 502.

[9] 1 H. D. (O. S.), p. 29. The Abstract of Subdivision Rolls (Schedule D). under 43 Geo. III., c. 96, so far as the same could be made up (May 7, 1804, 59 Com. Journ., p. 712) gives this general result, the numbers being given for each county in Great Britain :—

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98. Whether it was an expedient Policy to attract so large a proportion of the adult population into the ranks of the Volunteer, and away from the other forces—defensive or offensive—might well be questioned. No doubt, in time of peace, or rather in the absence of war within the Realm, the Volunteers, by offering service under the first of these Statutes, had undertaken a duty that others of their fellow citizens were free from until the last of the three Acts was passed; but *War* within the Realm would place all citizens upon a common footing, and the service of every adult man at the disposal of the Crown.[1] "The Right Honourable Gentleman (Mr. Addington) has not only not provided an Army," said Mr. Windham, "but has rendered it impossible *that an Army should be provided;*[2] for the Volunteer system had, either by design or mistake, locked up 400,000 men of the active population of the country."

The expediency of these exemptions doubtful.

99. Mr. Pitt did not, however, join in censuring the Ministerial Policy for the defence of the country. Every Volunteer had at least one qualification for a soldier, viz., goodwill: and upon another occasion,[1] he went on

Mr. Pitt's approval of the Ministerial Policy as to the Volunteers.

| Ages. | Class. | | Men. |
|---|---|---|---|
| 17 to 30. | 1st | Unmarried—no children living under 10 years .. .. .. .. .. | 552,619 |
| 30 to 50. | 2nd | Do., and no children under 10 | 138,752 |
| 17 to 30. | 3rd | Married or 2 children under 10 years | 345,653 |
| 17 to 55. | 4th | Remainder of men .. .. .. .. | 794,291 |
| | | | 1,831,315 |
| | | Army, Marines, Volunteer Corps, Sea Fencibles .. .. .. .. | 176,780 |
| | | Clergy, Licensed Teachers, Medical Men, and Constables .. .. | 29,878 |
| | | Infirm .. .. .. .. .. .. .. | 118,322 |
| | | | 2,156,295 |
| | | Voluntary service .. .. .. .. | 482,761 |
| | | Enrolled in Parishes out of the County .. .. .. .. .. | 15,534 |
| | | | 498,295 |

The Com. Journ. of 1806, p. 631, in a statement, dated 29th March, 1806, gives later Returns for a very few counties, viz., 1804, subsequent to May, and 1805; but these Returns do not lead to any general conclusion.

[1] King *v.* Witnesham, 2 Add. and Ell. p. 654. [2] H. D. (O. S.), pp. 179-81.

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to say that—"Parliament itself, by sanctioning and regulating the Volunteer system, had adopted this principle; and if, in the execution of it, Government have adhered to the policy which Parliament approved, and to the provisions it enacted, they must stand acquitted of all blame."[2] He then stated his own views of the question.[3] "I was formerly, and still am of opinion, that to a Regular Army alone, however superior, however excellent,—that to the Regular Army, even aided by the Militia, we ought not *solely* to trust; but that in a moment so eventful, in a crisis so full of danger, in a contest so singular in its character, and which perhaps may be tedious in its duration, we ought to superadd to the Regular Army some *permanent system of National Defence*, either to a certain degree compulsory or formed upon the Voluntary zeal and Patriotism of the country itself. This ought to be resorted to as the grand source of domestic security. The Army must be the rallying point; the Army must furnish example, must afford instruction, must give us the principles, on which that National System of Defence must be formed, and by which the Volunteer forces of this country, though, in a Military view inferior to a Regular Army, would, fighting on their own soil, for everything dear to individuals and important to a state, be invincible."

Mr. Pitt's views on Volunteer System.

100. The Volunteer Establishment appears to have been formed upon the theory that the number should be six times that of the Militia force; and to have been too rigidly adhered to in regard to Local Organisation. "I only wish," said Mr. Pitt in the speech last quoted, "that when it was fixed generally, that the Volunteer force might be six times the number of the Militia, a greater proportion had been assigned, or a facility had been reserved, of increasing it in the maritime counties, or in those most vulnerable and most exposed to the first

Volunteer Establishment to be six times the strength of the Militia.

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[1] 1 H. D. (O. S.), p. 189.

[2] See the Vote of Thanks to the Volunteers in 1803, 36 Parl. Hist., p. 1691, and again in 1806, 7 H. D. (O. S.), p. 1105.

[3] 36 Parl. Hist., p. 1637.

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attacks of the enemy. I am sorry that a different distribution was not adopted with reference to the grand object of resisting and repelling the attempt at Invasion, in the first moment it should be made. I am confirmed by the opinions of much better judges than I can pretend to be of such a matter, that a much smaller force would be sufficient to harass or defeat the enemy on their first landing, than a much larger force, after they had landed and recovered from the effects of their voyage. Both, therefore, with regard to the Economy of Money, but with regard to a much more important Economy—that of lives—it would have been desirable that the number of Volunteers should have been increased and encouraged in proportion to the proximity to the Coast, and to those points which are most liable to attacks."

A.D. 1803-4. Strength of the Volunteer Army.

101. In the Estimates for 1803-4 the numbers of the Volunteer Force are given at 379,943[1] for Great Britain (of which 42,500 Infantry and 2,500 Cavalry were serving without pay), and at 70,000 for Ireland. With so large a force in Arms it became necessary to consolidate and amend the law under which they were serving, and, in reference to the force in Great Britain, this was done by the 44 Geo. III., c. 54.

Strictly Local force.

102. At that time the Service of many Volunteer Corps was *strictly* Local, offered *only* to protect their own town[2] or district; the Commissions of the Officers being granted by the Local Authorities under the Special License of the Crown. The Act was therefore passed to give effect to those arrangements; and in this respect it differs, as will be seen hereafter, from the Volunteer Act, 1863, under which the present Volunteer Force is raised. However, the Yeomanry Force, as raised and governed by the *old* law, first claims attention.

The Yeomanry Force.

103. The Yeomanry Force, as the name would indicate, has always been constituted of the Yeomen of England, with Noblemen and Gentlemen as Officers. The "Hun-

[1] H. D. (O. S.), p. 158, 205.

[2] See 43 Geo. III., c. 82. sec. 7.

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ter Volunteers" had arms and accoutrements issued to them by the Ordnance upon the King's order, on the countersign of (the first) William Pitt, on the 18th December, 1761,[1] and at the outbreak of the Revolutionary War the second William Pitt proposed, by the 37 Geo. III., c. 6, 23, and 139, to raise by Ballot a provisional cavalry force of 20,000, as an augmentation to the Militia, the Ballot being suspended, if gentlemen constituting three-fourths of the quota of any district volunteered their services.[2]

104. The Bill on which the 44 Geo. III., c. 54, was founded was strongly opposed in its passage through Parliament, and as a consequence its provisions are not so symmetrical as the original framer probably designed them to be. However, the enactments of both the old and new statutes are—as will be seen by comparison—in many fundamental principles the same.

A.D. 1804. Volunteer Act—44 Geo. III., c. 54.

105. The Services of all Volunteers are to be tendered to the Crown, through the Lieutenant of the County. The pleasure of the Sovereign is the sole criterion of their acceptance, and of their continuance, there being no other limit, either in peace or war, as to their number or existence. When the 44 Geo. III., c. 54, was before the House of Lords, Lord Grenville endeavoured to induce Parliament to limit the number; but as the service is purely voluntary—any one not on actual service having a right to resign without the assent of the Crown—it was deemed only reasonable to counteract the effect of this principle by giving to the Crown an unlimited power of accepting the services of other Volunteers.[3]

Provisions common to the Yeomanry and Volunteers.

Numbers of Yeomanry and Volunteers unlimited.

This right became a matter of doubt in the original institution of the force from the contradictory opinions of Lord Erskine (when at the bar) and of Mr. S. Perceval (as Attorney-General). It was then rendered clear by the Legislature, and the permission to resign is expressly given, though on somewhat different conditions, by

Right to resign without assent of the Crown.

[1] Ordnance Book, p, 93.

[2] See 38 Geo. III., c. 51-94, and 39 Geo. III., c. 23.

[3] 2 H. D. (O. S.), p. 4.

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each statute. The earlier Act extends to Officers as well as men, according to the view taken of the law in 1804.[1]

and to enlist in the Army or Militia without sanction of Volunteer Commanding Officer.

106. In addition to the right of resignation, the law enables a Volunteer to enter the Regular or Militia forces as of right, without the previous sanction of his Commanding Officer,[2]—the object of Parliament being to encourage, or at least not prevent, enlistments into the Regular Army.

Exemptions from Militia and other services.

107. An "effective" under either statute enjoys exemption from the Militia; but an "efficient," under the 44 Geo. III., c. 54, also enjoys exemption (under the words of the 4th sec.) from any other force raised for the defence of the Realm under any *future* statute, and from being placed in any Regiment, Battalion, or Corps of Regulars or Militia without his free consent first had and obtained.[3] This exemption was objected to when the Act was under discussion in the Lords, and it has not been always observed.[4]

Commissions of the Officers.

108. As Unpaid soldiers they are drawn from a higher social class than the men of the Militia, and hence no property qualification for the Officers is required. Their Commissions (save those of Officers on the Permanent Staff) are granted by the Lord-Lieutenant, and are not purchasable. Any person implicated in a purchase transaction of *any* Commission in the Volunteer Forces would be guilty of a misdemeanour, and be punishable accordingly.[5]

Relative Rank of Officers.

109. The relative rank of Officers serving under the 44 Geo. III., c. 54, and with the Regular and Militia forces, is the youngest of their respective ranks, except that no such Officer shall take rank above a Field Officer of either of the other services.[6] The relative rank of Officers serving under the 26 and 27 Vic., c. 65,[7] with the same Forces

[1] 43 Geo. III., c. 54, sec. 30; 1 H. D. (O. S.), p. 683; King *v.* Dowling, 4 East. Rep., p. 516; King *v.* Witnesham, 2 Add. and Ell., p. 654 *note*; 26 & 27 Vic. c. 65, sec. 7; and Appendix LXXVI.

[2] 44 Geo. III., c. 54, sec. 31; 26 & 27 Vic., c. 65, sec. 8.

[3] See 2 H. D. (O. S.), p. 14; and 49 Geo. III., c. 53, sec. 19.

[4] Sec. 24, and 1 H. D. (O. S.), p. 722.

[5] 49 Geo. III., c. 126; and Eicke *v.* Jones, 11 C. B. (N. S.), p. 633.

[6] 26th sec. of that Statute, and 46 Geo. III., c. 125.; 6 H. D. (O. S.), pp. 687-8; 7 H. D. (O. S.), pp. 1019-40.

[7] Sec. 5.

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is the youngest of their respective ranks, but they are prohibited from ever exercising any Command over those forces otherwise than is prescribed by the Mutiny Act and Articles of War. They serve in other respects upon an equality with the Yeomanry, according to the rank and date of their Commissions.

As to Court-martial duties.

110. The Volunteer forces form their own Courts-martial for the trial of their own Officers and men, and are prohibited from sitting on any Court-martial for the trial of Officers or Soldiers of His Majesty's other forces.[1]

Armed by the Crown.

111. Subject to proper regulations as to their use, they are provided by the Crown with arms,[2] and with a regulated amount of ammunition; and the Commanding Officer of each Regiment—in whom the right to sue for this and other property is vested by statute—is held responsible for their safe custody and return into store when demanded by the Crown through the Lord-Lieutenant.

Wives and families of both forces.

112. When Volunteers are upon actual service, a provision is made for their wives and families, similar to that made for those of the Militia—a provision granted by Parliament in favour of the Militia as distinguished from the Standing Army.[3]

Officers released from being Public Accountants.

113. The Officers serving, and recipients of public money, under the 44 Geo. III., c. 54, become public accountants to the Crown; their lands are liable to attachment under the 13 Eliz., c. 4, and they themselves subject to the orders of the Audit Commissioners; but Parliament has seen fit to relieve them from these consequences by the 44 Geo. III., c. 94.[4]

As to Benefit Societies.

114. By the 23 Vic., c. 13, all Volunteers are alike exempted from losing or forfeiting any interest that they may possess in any benefit society by enrolling themselves as Yeomen or Volunteers; though the Volunteer Act, 1863, as to Volunteers serving under that Act, repealed that statute, and re-enacted similar provisions.[5]

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[1] 44 Geo. III., c. 54, secs. 21 and 25; and 26 & 27 Vic., c. 65, sec. 23,
[2] 44 Geo. III., c. 54, secs. 42-4, 50; 26 & 27 Vic., c. 65, secs. 25, 26, 28.
[3] 44 Geo. III., c. 54, sec. 38; 26 & 27 Vic., c. 65, sec. 18; par. 11, *ante*.
[4] 2 H. D. (O. S.), p. 1060. [5] Sec. 44.

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115. From this point the duties and obligations of the Yeomanry must be considered separately, as the same law does not further apply to the Volunteer Force. Upon invasion, or on rebellion or insurrection arising or existing on invasion, the Yeomanry of each county, on the summons of the Lord-Lieutenant, are bound to assemble in their own county, or other agreed district of service, and to march to any part thereof. They are also to continue on service (subject to the Mutiny Act and Articles of War), until a Royal Proclamation[1] shall declare the enemy defeated, or the rebellion suppressed.

Provisions applicable to the Yeomanry.

Duty on Invasion or Insurrection.

116. Other duty may be voluntarily undertaken by them. With the approbation of the Crown, signified through the Secretary of State, they may

Other duties voluntarily undertaken.

1. Voluntarily march to do military duty.
   (*a*) Upon invasion.[2]
   (*b*) For improvement in military exercises.[3]

On the order of the Lord-Lieutenant or Sheriff they may

2. Voluntarily march to and act within the county and adjacent counties.
   (*c*) For the suppression of riots or tumults.

117. The duty referred to in these sections must not however be confounded with the ordinary duty,[4] which, in common with other of his Majesty's subjects, the Yeomanry discharge on the call of, and to aid the Civil Magistrate. In the discharge of these duties on many occasions, the Yeomanry have done valuable service to the civil community, which has been recognised with approval in Parliament.[5] "It is much more desirable," said the late Duke of Wellington "to employ cavalry for the purposes of police than infantry; for this reason, cavalry inspires *more terror* at the same time that it *does much less mischief*. A body of twenty or thirty horse will disperse a mob with the utmost facility, whereas 400

Duty in aid of the Civil Power.

[1] Sec. 22, and 1 H. D. (O. S.), p. 721.
[2] Sec. 22.
[3] Sec. 23; 1 H. D. (O. S.) p. 722.
[4] Appendix LXXVII.; and King *v.* Witnesham, 2 Add. and Ell., p. 652.
[5] 57 Geo. III., c. 44; 14 H. D. (3), 166; 52 ib., p. 1094; 57 ib., pp. 14-34; 70 ib., p. 1344; 76 ib., p. 134; 113 ib., p. 371; 144 ib., p. 693.

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or 500 infantry will not effect the same object without the use of their firearms, and a great deal of mischief may be done."[1]

118. It was with this object in view, and to secure these services that the Yeomanry Establishment was remodelled by the Government in 1828. In those districts where, from the experience of the ten antecedent years there was little reason to apprehend disturbance, the Yeomanry Corps were disbanded, with an expression of his Majesty's approval of the zeal and patriotism uniformly displayed by them since their establishment under the pressure of war, and with permission to the Officers to retain the rank and honours belonging to their respective Commissions.[2]

A. D. 1828. Yeomanry Establishment remodelled.

119. With regard to training and exercise, the Act imposes upon the force as conditions of efficiency a certain number of days, which have been reduced by later statutes;[4] but with the approval of the Crown, signified by the Secretary of State, any Corps may voluntarily assemble within the county for further training and exercise for any space of time not exceeding fourteen days in the year.[4] The instruction of the force is carried on with the aid of the officers of a permanent staff, when the establishment of the Corps is of sufficient strength to justify their employment.

As to the Training and Exercise.

120. The law for the discipline of the Yeomanry is the Mutiny Act—as to the permanent staff at all times, and as to the other members, at such times as they are acting, under secs. 22, 23. At other times the Commanding Officer has power to punish according to rules laid down in the Act, or in regulations lawfully made under it. Thus, while under arms[5] (not being on actual service), for disobedience or breach of discipline, or at other times for neglect of attendance and

As to the Discipline.

[1] Finance Com., 1828, p. 4.

[2] Circular to Lords-Lieutenant, Dec. 5, 1827, p. 138; see also Debate on bringing out the Irish Yeomanry at the affray at Newtonberry, 12 H. D. (3), pp. 499 to 536; 13 ib., p. 279; 14 ib., p. 165.

[3] 56 Geo. III., c. 39.

[4] Sec. 46 of 44 Geo. III., c. 54; 1 H. D. (O. S.), p. 722.

[5] Sec. 27, and 1 H. D. (O. S.), pp. 725, 730, 848.



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duty, misconduct, or improper behaviour as a member of the Corps, or for other sufficient cause, the Commanding Officer may immediately strike a member off the Roll of the Corps. Further,[1] the Commanding Officer may order an offender into the custody of other members, while the Corps is under arms, for not conducting himself in a decent or orderly manner, or for disobedience at training or exercise, or under arms, or when wearing uniform. He may also order the day of training and the pay (if any) to be disallowed against the offender.[2]

Pecuniary Advantages.

121. The pecuniary advantages to the Yeomanry are small. Each man is exempt from the horse duty,[3] in respect to such animal as he uses for training and exercise. When out on service, under secs. 22 and 23 of the Act, the officers and men are entitled to certain allowances under the 36th and 39th sections,[4] and to pay as officers and soldiers under the 37th section. When out training, under the 46th[5] section, their remuneration is settled by the 48th section of the Act. An "effective" is not liable to serve the office of Parish or Special Constable.[6]

Present Strength of the Force.

122. The Yeomanry, though reduced in 1828, and again in 1838,[7] has never ceased to exist[8] since Parliament sanctioned its existence as a permanent force in 1802, and its present strength is forty-eight Corps, comprising 264 troops, shown thus :[9] —

| | | |
|---|---|---|
| *Permanent staff.* | Adjutants . . . . | 33 |
| | Serjeant-Majors . . | 8 |
| | Serjeants . . . . | 272 |
| | Trumpeters . . . | 44 |
| Officers . . . . . | | 970 |
| Non-commissioned Officers and Men | | 12,941 |
| Total . . . . | | 14,268 |

[1] Sec. 29. [2] Sec. 28; 1 H. D. (O.S.), p. 831.
[3] 44 Geo. III., c. 54, sec. 11; 144 H. D. (3), p. 2214.
[4] 1 H. D. (O. S.), p. 731; 137 ib. (3), p. 1787. [5] 1 H. D. (O.S.), p. 722.
[6] 1 & 2 Wm. IV., c. 41, sec. 1; 5 & 6 Vic., c. 109, secs. 3 and 4.
[7] 41 H. D. (3), p. 799; 42 ib., pp. 638, 819, 944, 1026.
[8] As to the Debate on training the Yeomanry in 1864, see 173 H. D. (3), p. 1376.
[9] 'Army of Great Britain,' p. 128.

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123. With regard to the Volunteer Force, it has already been noticed that its establishment upon a large basis did not receive an unanimous approval in Parliament. As a Volunteer force it ought not, in the opinion of Mr. Windham, to withdraw either money or men from the supply to the Regular Army. Nor would it do so if the members were, as he thought they should be, drawn from the higher class of citizens, from those who were capable of bearing all the expenses of the service, but unable to enter the ranks of the Army or Militia, except at the loss of their lucrative employment.

A.D. 1806. Volunteer Establishment reduced by Mr. Windham.

124. Upon Mr. Windham's accession to office in 1806 he found the Volunteer force numbering, say, 360,000, and maintained at the annual cost of 1,159,485*l.*; and he therefore directed his attention to the curtailment of the expense of the Volunteers, so far as votes in supply went, and to the diminution of their numbers, so far as they withdrew recruits from the other forces of the Crown. His measures, therefore, were firstly, the repeal of the Levy *en masse* Act, and, secondly, the substitution of a general Training, in lieu of encouraging any increase in the Volunteers. In proposing his Plans to the House of Commons, he first dwelt on the expense of the Volunteers as a defensive force. "It is a fact," he said, "that during the three years and a half that this system has existed, it has cost *Government* no less than five millions sterling[2] in allowances to the Volunteers. The expense that the Volunteers have themselves gone to,

Mr. Windham's Training Act.

Expense of the Volunteers.

[1] RETURN OF THE NUMBERS AND ANNUAL COST OF THE VOLUNTEER FORCE.

| JANUARY MEN. | JULY MEN. | COST. |
|---|---|---|
| 1804.—380,195 | 369,503 | £1282,818 12 7 |
| 1805.—360,814 | 354,683 | 1159,485 1 4 |
| 1806.—351,508 | 349,226 | 171,011 0 4 to 25 April, 1806 |
| 1807.—334,910 | 333,761 | |
| 1808.—336,404 | No return* | |

* Number of men deficient on the original establishment up to the 2nd May, 1808, 53,655. 161 Com. Journ., p. 634; 63 Com. Journ., pp. 618-9.

[2] 6 H. D. (O. S.), p. 680.



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and the various subscriptions and contributions that have been made in aid of the system, amount to at least as much more. I am stating it below the mark when I say that the security which the country has derived from the Volunteers for the last three years and a half has been purchased at the enormous expense of above ten millions sterling, *besides* the depriving our *more efficient descriptions* of force of many men *who would otherwise have entered into them.*"[1]

Plan for Training the People for Army Service.

125. To withdraw men from the existing Volunteer Corps, and to train them to arms, with a right of attaching them to the ranks of the Regular Army when trained, was the policy which Mr. Windham strove to initiate:[2]—"I conceive the general question to be whether it is better that the mass of the people should be loose and unattached, but under the idea of their being liable to be attached, if necessary, to any corps that his Majesty, in the exercise of his Royal prerogative, may think most proper, or whether they should be put into Volunteer Corps under the idea that they are *not* to be attached to any *other body?* I again repeat that my wish was that the Volunteer Corps should consist of *a higher class of life, of a better condition,* of such a description as it would *not be proper to mix with soldiers* of the Line, and whom no one would wish to see obliged to serve in the condition *of a Common Soldier* in a Regular *Regiment,* but that the great body of the peasantry, that description of men from whom *the Regular Army* ought to be recruited, *should not be shut up in those Volunteer Corps.* Could I realise my wish to see the great mass of the population of the country so far trained as to be able either to act as an Armed Peasantry, or to recruit immediately whatever losses the Regular Army might receive in action, then, indeed, I should consider the country as invincible."

Policy towards the Volunteers.

126. With these views Mr. Windham announced, as to all Volunteers entering the service after that date, that the Government would issue only *arms;* and as to all

[1] 6 H. D. (O. S.) pp. 680-1.

[2] Mr. Windham was challenged by Mr. Perceval to make good his assertion (6 H. D. (O. S), p. 843), and the return was laid on the table of the House of Commons, showing a total expenditure from the commencement of the War to 25th April, 1806, of 3,422,213*l.* 17*s.* 9*d.* (61 Com. Journ., p. 634.)

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existing Corps, that the Government would not undertake to issue pay or clothing beyond the next succeeding year.[1] Nothing in future was to exempt any man from the general training but his becoming a Volunteer *at his own expense*, the advantage of which to him would be that he could train and fight (if occasion required it) in his own Corps, instead of being obliged to fall in with the Regulars.

127. The Training Act—the Bill for which Mr. Windham introduced to the House,[2] and which became law as the 46 Geo. III., c. 90—has this peculiarity attaching to it, that though men have never been trained, yet the Act remains unrepealed. The Training Act.

128. The scheme is to create—by the machinery of the Ballot—a register of all the persons "capable of bearing arms" (at that time consisting of 819,924 adults), and out of these to raise 200,000 men to be trained for one[3] year (from November to November), and then to discharge them from training for two years. Any person chosen has the choice of serving as an efficient in a Volunteer Corps,[4] for entire exemption, or of paying a fine of 10*l.* for *one* year's exemption; but in the latter case he would be liable[5] (if chosen) to train the next year after that for which he fined. The training is to be for *twenty-four*[6] days, at 1*s.* a-day pay, with permission for Volunteers to train for twenty-four days in addition, at 1*s.* a-day and a 10*s.* Bounty. The place of training is to be within five miles[7] of each man's home, and all defaulters are to be fined by the Justices. The principal Provitions of it.

129. Upon invasion,[8] or the appearance of an enemy on the coast, the Crown, by Proclamation, is at liberty to embody the men trained in that or the preceding year, and to attach them to the Regiments of the Regular Army or Militia, or to form them into new Regiments. Those not appearing are to be punished as deserters.[9] Others, while serving, Service of, upon Invasion.

[1] 6 H. D. (O. S.) p. 684.
[2] 7 H. D. (O. S.), pp. 816, 851, 862, 904, 921, 1084; Papers as to the Act, 1806-7 (48), vol. iv., p. 261. [3] Secs. 4, 9, and 15. [4] Sec. 18. [5] Secs. 16, 17. [6] Sec. 11, and Schedule. [7] Secs. 26, 27. [8] Secs. 35. [9] Secs. 40, 42.

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are to receive pay as Regular Soldiers, to be subject to the Mutiny Act, and to have the benefit of Chelsea Hospital. They can be marched to any *part* but not *out* of Great Britain.[1]

The Training Act not adopted by Lord Castlereagh.

130. The Administration of which Mr. Windham was a member remained only a short time in office; and upon Lord Castlereagh's succeeding to the War Department the Training Act had been put in operation, though with no definite policy declared by its author. Lord Castlereagh, in a memorandum submitted to the Cabinet in March, 1807, speaks of it thus[2]:—"It only remains to call the attention of the Cabinet to the situation of the Volunteers, and to the measure now in progress for training the population of the country. The latter has been proceeded in so far as that lists have been taken, an apportionment of 200,000 men made by his Majesty in Council, and a warrant under the Sign Manual been issued, directing the ballot and enrolment within the respective counties to take place, which is now going on. The order for proceeding to train was reserved for a separate warrant; and it does not appear that the late Government *had at all settled in their own* minds *how this part of the measure was to be executed.* Indeed, upon a careful perusal of the Act, it appears so totally impracticable, that Lord Castlereagh is induced to recommend to his colleagues to suffer its execution to proceed no further than the ballot and enrolment. This process will give the country some trouble, but it may at least *serve to keep up the number of the Volunteers.* In a future session, it may perhaps be desirable, in the room of this fleeting and inapplicable mass, to substitute a less numerous, but a more regularly appointed and officered force, to be trained within their respective counties, as *a Sedentary Militia,* for thirty or forty days in each year, of which a proportion of the men should be suffered *annually* to enter into the line; but this cannot now be attempted, as, exclusive of objections on the score of hastiness and convenience, the ballots, as prescribed by the Act, are on the point of commencing in several counties."

Cabinet Memorandum.

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[1] Sec. 37.

[2] Castlereagh Despatches, vol. viii., pp. 49, 50.

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131. The plan thus foreshadowed continued to engage the attention of Lord Castlereagh; for in a later memorandum he enters at length into the question of raising a defensive force, divided into three classes:— Local Militia suggested.

| | |
|---|---|
| 1st. Volunteers of the best description .. .. .. | 100,000 |
| 2nd. Sedentary Militia to be trained for 28 days .. | 200,000 |
| 3rd. To be trained, and liable to service in the Line in case of Invasion .. .. .. .. .. | 200,000 |

In creating these several descriptions of force, the following considerations occurred to him:—

132. "The Volunteers will create themselves. They will naturally consist of persons in business, and in easy circumstances, who will resort to these corps to escape service in other modes less consistent with their habits and avocations. They will be chiefly confined to the great towns and populous manufacturing districts, and will be so much an object to numbers to be included in, as to furnish to the State the means of imposing on them conditions that will make them a cheap, efficient, and most useful force. 1st. Volunteers.

133. "The next consideration is the Sedentary Militia, to give more efficacy to which it is proposed that it should be always supplied by ballot out of the trained men, who, being previously instructed in the manual and platoon exercise, and in a rough knowledge of the firelock, will, in the course of twenty-eight days in each year, become sufficiently expert in the movements and the higher branches of discipline. In order to render these corps completely effective, both at the annual training and on service, if called out, and also to avoid the trouble of repeated meetings for balloting, it is proposed that, at the time of the annual ballot or muster for trained men, to be regulated as hereafter, over and above the full number of effectives required for the Sedentary Militia, supplementary men, to the amount of one-third or one-fourth of the establishment, should be then drawn, who should be liable to be called on to serve upon vacancies in the order in which they were drawn. 2nd. Local Militia.

134. "With respect to the last of the three descriptions of forces,—viz., the men to be trained,—two courses may be pursued: either to pursue the principle of the present 3rd. Trained men.

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Training Act—that is, to choose by ballot the number required out of all men, between the ages of eighteen to forty-five, not otherwise serving or exempted, or to proceed more upon the plan of conscription, and to require all persons within certain ages to be trained to arms, and, for a time to be limited, to render to the State a qualified military service.

"The latter course would certainly be the most efficient in a *military* sense, inasmuch as it would give you preferably the use of the flower of the population. It would not be felt to be inequitable in itself, that the young and able, within certain ages, should in succession be required for a few years, under regulations not burdensome in themselves, to be prepared to defend the country, and it certainly would gradually introduce a military spirit more uniformly than any other system into the people at large.

As to Population not in any Military Service.

135. "It only remains to consider how that portion of the military class not at the moment serving in the Sedentary Militia,[2] in the Volunteers, or any of the more regular branches of the Military Service, can be best trained to arms. By training, it is assumed, is not meant a knowledge of tactics; but such a knowledge of, and facility in the use of the firelock, as may render the individual capable of doing service, if placed on an emergency in the ranks among men previously disciplined."[3]

Proposed in Parliament by Lord Castlereagh.

136. In April, 1808, Lord Castlereagh laid before the House of Commons his views upon the general question whether a Volunteer, or a Trained Force, or a Local Militia should be adopted as *the* Reserve Force of the Country, and he followed the debate up by introducing the Local Militia Bill, which was ultimately passed as the 48 Geo. III., c. 3. His preference was decidedly in favour of the "regimental" rather than the "general" training of men. He desired to form regiments of Local Militia, in aid, and as a source of supply to the Standing Army, into which some of the existing Volunteer corps might be willing to merge themselves. "I consider it," said Lord Castlereagh, "of little use to

[1] 'Castlereagh Desp.,' vol. viii. pp. 115, 116. [2] Ib., pp. 118-21.

[3] The remainder of this Memorandum will be found in Appendix LXXVIII.

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have men trained unless they were regimented. The regiments of Regulars, Volunteers, or Militia, into which they should be put after such imperfect training, would have little benefit from them. If trained in regiments they would be of real utility. The training of the whole number of 800,000, which number the Training Act proposed successively to train, would have been a general hardship without any benefit, or an imperfect and contingent one, except in case of incorporation. The Volunteer training was such as to leave the men in a state of perfect discipline, fit for service, without any further instruction, whenever the exigency should arise.

Training only useless, unless Regimental.

137. "But, while the General Training, in this view, was more vexatious than beneficial, there was another view in which it was serviceable. The men might be trained up so as to be qualified to fill the ranks of the Militia and Regular Army, and, if it should be necessary to make use of them, they would be ready. Instead of training the whole military classes, a sufficient number might be trained to cover any probable exigency that might be expected to arise.

Training to aid the Regular Army.

138. "The Regular Army at home at present amounted, with the Militia, to 200,000 men, exclusive of Artillery. The Regular Army, if raised to 100 men to each company, which was no more than the officer commanding could easily manage, might admit 50,000 additional men. It would be a great advantage that this number of men should be ready trained, without any occasion to ballot for them. They should be regarded as an army of reserve, to be made use of only in cases of great emergency. There would be no occasion to have recourse to the parish officers; the men would be always ready, when a local Militia should afford such facilities of general training, and the men so trained would be an acquisition to the regiments they might join. It would be sufficient training to drill the men forty-eight days near their homes, according to the system of the Militia in time of peace, and to have them embodied twenty-one days in their own counties. A measure of this kind would have such an effect on the

Strength of the Army to be increased.

[1] 11 H. D., pp. 39, 42, 43.

[2] Ib., p. 44.

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recruiting of the Regular Army, that the most ample reliance might be placed on its effects in any circumstances."

139. Then, as to the former Volunteer Establishment—he observed that—"When the gross amount of the effective Volunteers was compared with six times the amount of the Militia, there was found a deficiency of 30,000 on the aggregate. But when this deficiency came to be subdivided, there was found an inequality, some of the Counties being more deficient and some less, and among the latter the Maritime Counties; and the consequence of this inequality was, that 60,000 would be wanted to complete the establishment to the amount desired. He proposed, therefore, to give to the Crown a power to create a Local Militia, to the aggregate amount of 60,000 men in the first instance, to be increased in proportion as the Volunteer force should diminish, and to supersede them totally if they should withdraw their services in the event of peace."

Volunteer quota, as six times that of the Militia, defective.

140. As to the training of the force, he proposed that it should be in the county, and at convenient times; not for one year only, as Mr. Windham had proposed, but for four years. The service must be personal, as it was intended to allow no substitutes:—"But, in order to prevent the injurious confusion of the highest with the lowest ranks, some mitigation should be admitted; and he proposed to follow the example of the right honourable gentleman opposite, by allowing the party to retire on paying a fine of such magnitude as to discourage the having recourse to it, except in very strong cases. He would wish to *encourage* the service of persons *of rank* as *officers:* conceiving there were many persons who would enter into this service voluntarily, he proposed that such offers should be received, and that the ballot should be enforced only where there were no offers, no selection by the parish officers. He would not allow the parishes, any more than individuals, to find substitutes; for though they would not create so general a competition in the market, they would yet create enough to do mischief. To prevent this evil, he proposed a penalty on the person consenting to be a substitute, and on a parish accepting him.

Training for four years.

No Substitutes, but fine for exemption.

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141. "He proposed to give a small bounty of two or three guineas to those who should enter voluntarily, in order to render the compulsory obligation of the law unnecessary. It was intended to submit persons, from a certain age to a certain age, to the compulsory obligation of the ballot, and by a little attention to the classes, it would be easy to determine the proper proportion. But it was only in the event of a deficiency of Volunteers, that the ballot was to be taken up; therefore age could not be so well applied, and the state of the Volunteer establishment would always be a difficult matter of regulation."

Bounty to Volunteers.

Ballot for deficiency.

142. That this force might not interfere either with the Regular Army or Militia, no man in the Local Militia was to be debarred from enlisting in either of these forces at his pleasure, save when the Local Militia was embodied. And with regard to the Volunteers[2]—"He conceived it possible that Volunteer corps might, in many instances, wish to change the terms of their engagements, and to become corps of Local Militia. It was well known that the establishments of some Volunteer corps were more expensive than was necessary. This might be expected to produce some embarrassments with respect to funds, which it would be desirable to escape, by turning to a service which required no stock purse. This disposition should be encouraged, because the Local Militia would be always effective for service."

Men to be at liberty to enlist into the Army.

Volunteers to be permitted to join the Local Militia.

143. Upon the question of expense, he said[3]—"The whole expense of the proposed force to the country would not exceed that of the Volunteers at present, nor that which would be to be incurred under the Training Bill of the right honourable gentleman. He had made comparative calculations, and had adjusted the Bill, which the right honourable gentleman might see. The right honourable gentleman's trained men would cost more than a Volunteer or Local Militia man. The cost of this last was something less than 4*l*."

Expense 4*l*. per man.

144. The provisions of the Local Militia Acts are to be

[1] 11 H. D., pp. 45, 46. [2] Ib., p. 47. [3] Ib.

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found in the Appendix.[1] The experiment — for such it was — may be considered as successful.[2] In the first year 250 regiments were raised; 184 regiments with 139,440 men for England, and 66 regiments with 45,721 for Scotland—so that the Government was able to reduce the bounty from 2*l.* 2*s.* to 1*l.* 1*s.* In the year 1812, the returns[3] laid before Parliament show that 214,418 men out of an establishment of 240,388 men, were serving in the Local Militia; and that 68,643 men out of an establishment of 99,368 men, were serving in Volunteer Corps.

Results of Local Militia Acts.

145. In the year 1812, the Local Militia Acts were consolidated, with some alterations in principle that did not escape notice when the Bill, on which the Act[4] was passed, was before the House.

A.D. 1812.

Amendments a departure from original Scheme.

146. "The noble lord," said Mr. Whitbread,[5] "originally proposed that measure as one by which *the whole male population* of the country might be gradually trained. The greater part of the Local Militia now embodied had already served three years, and would therefore fall to be disbanded in the course of the following year, the men not being capable, by the present law, of continuing embodied more than four years. The present Bill, however, proposed, that on an understanding taking place between the Commandant and the Men, a certain portion of the present Local Militia might be continued. Thus, then, was the plan of proceeding in a series, and of training the *whole* population of the *country by degrees, to be abandoned.* In his opinion, the first plan had been found to be a good one, and ought to be continued, and the clause in the present Bill, introducing this change, ought to be rejected."

Whole population not trained.

147. It could not be denied by Mr. Secretary Ryder, "that the alteration was a deviation from the original plan, as the ballot was the corner stone on which the Local Militia system was built. The acceptance of the *Voluntary*

Reasons of the Ministers.

[1] Appendix, Note R.
[2] 13 H. D. (O. S.), p. 818; 49 Geo. III., c. 40.
[3] 67 Com. Journ., p. 673.
[4] 52 Geo. III., c. 38.
[5] 21 H. D. (O. S.), p. 868.

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Service of such corps as chose to offer themselves, which the original Bill permitted, was also a deviation from that system, but he was of opinion, that the alteration was an improvement: first, it would produce a much more efficient force; and then relieve the country from a great inconvenience and burden, by preventing the necessity of calling persons away from their avocation in husbandry, &c., during the harvest; and, lastly, in an economical point of view, it would cause a saving of not less than 100,000*l.* a-year."

148. At the close of the Peninsular War, and during the last struggle, it was necessary that some further departure from the Original Scheme should be sanctioned. As the name indicated, the force was *strictly Local*, but in the Session of 1813,[1] the permission of Parliament was obtained for the Crown to accept from the Local Militia voluntary offers of service out of their counties, for a period not exceeding forty days in the whole year, and limited by the duration of the Act to the 25th of March, 1815.

A.D. 1813.
Further departure from the original Scheme.

149. The Local Militia and the Volunteer Force both fell into disuse with the long peace succeeding the Peninsular War; the Local Militia, being a Parliamentary force, was terminated with the sanction of Parliament. Accordingly, the 56 Geo. III., c. 3, was passed on the 21st of May, 1816,[2] authorising his Majesty, by Order in Council, to direct that no ballot should be made, and that the ballot and enrolment should remain suspended as by Order in Council might from time to time be declared. An Order was issued on the 27th of June, 1816, and so on annually, till the year 1836, when the issue ceased.

The Local Militia and Volunteer Force ceased during the Peace.

150. The Volunteer Force now established must be traced from the Public Notifications made by General Peel on the 12th of May, 1859,[3] that her Majesty's Govern-

The Volunteer Force now existing.

[1] 27 H. D. (O. S.), p. 189; 54 Geo. III., c. 19, and extended by 55 Geo. III., c. 76.
[2] 33 Parl. Hist., p. 1008.
[3] See discussion in 119 H. D. (3), 1413.

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ment was prepared to permit the formation of Volunteer Rifle Corps, as well as Artillery Corps and Companies in Maritime towns in which there were Forts and Batteries.

The present Volunteer Force differs from the old Volunteer Force.

151. The Volunteer Force of 1859 differs in many essential features from that of 1804. In the first place, as the Ballot does not exist, it is not stimulated by its operation, but is a purely Voluntary force. Secondly, it is drawn from a *higher* class than the force of 1804, and probably would not be materially lessened in numbers if a Local Militia should be established. And, thirdly, it is not—in the same sense that the force of 1804 was—Local. The service of that force was restricted to particular districts; but the present Volunteer force may be sent to any part of Great Britain, and is therefore "National."

Original Proposals by Lord Derby's Government.

152. The invitation contained in the original Circular was (through the Lords-Lieutenant) to persons who would undertake *to provide their own arms and equipments*, and to *defray all expenses attending the Corps.* The second Circular more especially laid down that the conditions of service should be such as to induce those classes to come forward *as Volunteers* who do not, under our present system, enter either the Regular Army or Militia.

Modified by Lord Palmerston's Government.

153. The Ministry of Lord Palmerston, in the first Circular put forth by Lord Herbert,[1] addressed the same class, "as engaged in important and often lucrative occupations;" but so far relaxed the rule of their predecessors as to *relieve* the Volunteers from the purchase of arms and ammunition. By the Conditions of service, the force was distinctly told that during invasion, but not otherwise, their services would extend to any part of Great Britain.

Volunteers entitled to a separate Staff and Establishment.

154. All idea, therefore, of treating the Volunteers as part of the Militia force, or of attaching them together upon one Establishment, must be considered as abandoned. These two County forces under the Lord-Lieutenant, come from distinct sources of supply, with the same area of service. When Parliament gave its sanction to the Volunteer

[1] 13 July, 1859.

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Act, 1863, the policy of having the Volunteer Force maintained on a separate Establishment was distinctly approved.[1]

155. The principal features of the Volunteer system have already been given. Under the present law, Volunteers are exempt from serving in the Militia, and therefore (by implication) in the Regular Army; but the force may be placed under General or Field Officers for command, though led by their own Officers.[2] Volunteer Act, 1863.

156. The efficiency is secured by an Annual Inspection, and by rules for training and exercise, laid down by the Queen in Council. The general government for interior organization is by regulations[3] approved by the Lord-Lieutenant and the Secretary of State. For sterner discipline, the Mutiny Act in actual service,[4] and the Commanding Officer in practice or exercise.[5] Efficiency of discipline.

157. To secure the property of the Corps, and to recover fines and subscriptions, the law has made provision that the Commanding Officer should be a *quasi* corporation,[6] with power of suing (though obviously not of being sued[7]). The Justices of the Peace have summary jurisdiction to adjudicate on questions of fines.[8] Property of the Corps.

158. An obligation rests on the Volunteers to provide for the safe custody of the arms entrusted to them, but any Storehouse for their use is exempted from all local rates.[9] To facilitate the acquisition of Ranges the power of taking lands by agreement under the Lands Clauses Act has been conceded,[10] subject to the previous approval of the site by the Secretary of State as to the safety and convenience of the public. This certificate would not probably be found to afford the Volunteer Corps any protection from legal proceedings taken against the members for the use of the ground. As to Custody of Arms and acquisition of Rifle Ranges.

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[1] Secs. 41, 49. [2] Sec. 9. [3] Secs. 16, 24. [4] Secs. 22, 23. [5] Sec. 21.
[6] Secs. 25-7, 48. [7] Cross *v.* Williams; 7 H. and N., p. 685.
[8] Secs. 27 and 48. [9] Sec. 26. [10] Secs. 31, 32.

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Each case, should any arise, would have to be decided *upon its own merits.*[1]

159. The strength of the Volunteer force is given for the year 1866-7 in these figures:[2]—

| | Men. |
|---|---|
| Light Horse .. .. .. .. | 830 |
| Artillery .. .. .. .. .. | 32,010 |
| Engineers .. .. .. .. | 4,823 |
| Mounted Rifles .. .. .. | 438 |
| Rifles .. .. .. .. .. | 139,961 |
| Total | 178,062 |

but the actual numbers have been as follows:—

| 1864. | 1865. | 1866. | 1867. |
|---|---|---|---|
| Enrolled 170,544 | 178,484 | 181,565 | 187,864. |
| Efficients 123,707 | 133,848 | 142,849 | 155,216 |

Reserve Forces under Home Secretary till 1854, and now under War Secretary.

160. It only remains to add, as a matter of Civil Administration, that the Reserve Forces, prior to the year 1854, were under the charge of the Home Secretary. At that time the Militia was dis-embodied, and the Volunteer Force was not in existence. The labour and responsibility of such an Administration were not matters of indifference to the Officers and men of the Militia service,—not in themselves unimportant. But in the present distribution of the business of the Secretariat, the Administration both of the Militia and Volunteer Armies is thrown upon the Secretary of State for War;—and that at the time when his Department is charged with the entire Ordnance and Army Administration, and has to provide for the Regular Army, in numbers larger than any Secretary at War or Secretary of State ever had any experience of in time of peace.

[1] See King *v.* Moore, 3 B. and Adol., p. 184; Hegenbotham *v.* E. S. P. C., 8 C. B., p. 337; King *v.* Pease, 4 Adol. and Ell., p. 30; Bannister *v.* Bigge, 34 Bea. Rep., p. 287.

[2] 'Army of Great Britain,' p. 141.

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161. Here the History of the Constitutional Reserve Forces ends—but this Chapter must not be closed without some reference to another Reserve of a totally different character and organization, which is constituted of men formerly non-commissioned Officers and privates in the Regular Army. This force dates, as to its existence, from the institution of a Standing Army; but as to its present organization, from the year 1843.

Army Reserve Force.

162. An early statute[1] (11 Henry VII., c. 18) imposed a special obligation to military service upon the recipients of pensions from the Crown, and in recent years this obligation has always rested on Army Pensioners. "One of the principal conditions," said the late Lord Palmerston,[2] "on which the Chelsea pension is given is, that every pensioner shall be liable to join a Veteran or Garrison Battalion whenever called upon so to do by a Proclamation issued either by the King or the Commissioners of Chelsea; and whenever it is thought desirable to embody the veterans into the Battalions, notice is given to the Pensioners by Proclamation. They are required to collect in certain places pointed out, medical Officers are sent down to examine them, to select those who may be fit for Garrison Duty; the men so selected are then ordered to repair to certain places fixed upon as the head-quarters of Battalions, to which they are to be posted; those who neglect to comply with such requisition are, *as a matter of course, struck off the Pension List.*"

All Pensioners liable to Military Service.

163. There is no constitutional rule, unless recent legislation furnishes such, limiting the power of the Crown as to the time or place where these Pensioners should serve. Before these Acts were passed it is certain that they might be called up to serve in time of peace, as was done in October, 1819, or abroad, as at Gibraltar and the Colonies[3]; but, unless

Power of the Crown unlimited.

[1] See Appendix, p. 350. [2] Evidence before the Finance Com., p. 179.

[3] 41 H. D. (O. S.), p. 1407. These are some of the occasions upon which the Pensioners were called out:—1745, Oct. 25 (Mis. Bk., p. 313); 1755, Oct. 2 (Mis. Bk., 1751, p. 408); 1770, Dec. 28 (Mis. Bk., 1768, p. 380); 1774 (Mis. Bk., pp. 46-54); 1778 (Mis. Bk., p. 131); 1787 (Mis. Bk. 1785, p. 203); 1790 (Mis. Bk. 1789, pp. 70 and 88); 1802 (Mis. Bk. pp. 24, 56, 298); 1819, Oct.; and in later instances given by Sir Henry Hardinge, 1 H. D. (3), p. 655.



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they were called out and formed into Regiments as soldiers,[1] there was no higher obligation imposed on them to aid the Civil Power than upon any other subjects of the Crown.[2] Their organization in 1842 and in subsequent years appears therefore to have been principally directed to this object.

Organization of 1842.

164. The men being scattered thoughout the United Kingdom it was the policy of Sir R. Peel's Ministry, in 1842, to appoint Officers whose duties should involve superintendence and command, as well as payment of pensions, whose situations should be considered as full-pay appointments, and they (themselves) designated Staff Officers of Pensioners. Further, the Officers were to have every pensioner under *surveillance*, and to report "every case of gross misconduct, or of their engaging in felonious or seditious practices." Each Officer had an assigned district, and the assistance of four intelligent and trustworthy Commissioned Officers to assist him in his duties.[3]

The Act of 5 & 6 Vic., c. 70.

165. These arrangements were presented to Parliament in a financial aspect, and the Act was passed to protect the Pensioners from the improvidence and inconvenience which, in several instances, the quarterly payments in advance led them to; but power was taken by the Act to appoint Officers on half-pay, *or other persons*, to pay their pensions.[4]

A.D. 1843. Military organization developed.

166. In the following year the policy of the Government was more fully disclosed. Power having been obtained, and military Officers having been appointed, in various districts throughout the Kingdom, the next measure was submitted to Parliament as one of Military organization,[5] in aid of the civil power; but the Bill, which was ultimately passed as the 6 & 7 Vic., c. 95, was opposed in the

[1] Lord Palmerston. 71 H. D. (3), p. 659.

[2] Rex *v.* Pinney, 5 Cav. and Pay., p. 273.

[3] Pp. 5, 6. The instructions for the guidance of this force are only to be traced in the printed Circulars that have been issued from March, 1842, to the present date.

[4] No Debate is reported in Hansard, and the statements are made on the authority of the Preamble of the Act.

[5] 71 H. D. (3), p. 360.

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Commons at every stage[1] of its progress, not only as an increase of the Standing Army, but as sanctioning the worst purpose for which any military force could be used, viz., to act against their fellow-countrymen.

167. One of the debates upon this Bill is worth notice, as furnishing an illustration of the entirely different view entertained by some military men of a Standing Army as affecting the Freedom of the civil community, to that which may be said to be the usually received opinion on the subject. No doubt most Statesmen admit that, as having no Standing Army according to the theory of the Constitution, and a small Army at all times prior to the present century, the people of England have hitherto enjoyed greater political freedom than any other of the European communities, and they attribute the result rather to this fact than to other circumstances in which our own has differed from their National Policy. In opposing the Bill this line of argument was pursued, and the late member for Lambeth expressed what may be termed the popular view, by lamenting the presence of a large military force within the realm, and by contrasting that circumstance with "the pride of our ancestors, that they were governed without military force, and that one of the greatest sovereigns of Britain had boasted that *her Guards* were *her people*." However, the argument appeared to the late Lord Hardinge (who had the conduct of the Bill) to be a fallacy—on the contrary, "an Army constituted like ours, was a protection, rather than any detriment to Liberty. We permitted a licentiousness which under any other Constitution might be fatal to the public peace. Meetings were held and language was used which no *other empire* would permit, and which nothing but the *confidence of the Crown* in the Standing Army would justify even our Government in permitting."[2]

The Army opposed to, or a security for, Freedom?

168. The Act authorised the Crown to form an establishment of 10,000 men to be enrolled in certain districts as a Local force,[3] for the preservation of the peace, and

Outline of the 6 & 7 Vic., c. 95.

[1] 71 H. D. (3), pp. 532, 557, 642, 744, 850. [2] Ib., pp. 652-4. [3] Sec. 1.



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gave authority to the Staff Officers to act as Commandants, with power to the Crown to place the force under General Officers of the Regular Army. It might also be armed and accoutred by the Crown, exercised for eight days in each year, called out in aid of the civil power, on the warrant of the Secretary of State, and lastly, permitted to volunteer for garrison duty for a period not exceeding six months, whenever any of the Regular Army should have been removed from the United Kingdom. The men were to be liable to the Mutiny Act and Articles of War, during these times of service or of training.

The aid to the Civil Power was thus given by Soldiers instead of Constables.

169. Instead, therefore, of bringing out 70,000 men as indifferent Special Constables, in aid of the Civil Magistrate, the Crown had the power of bringing out 10,000 efficient Soldiers, acting under Military Command, and liable to the Mutiny Act;[1] but *in time of war* the Crown had to rely on their voluntary services. To insure efficiency, the Staff Officers were ordered to select the most eligible Pensioners, and those selected were exempted from liability to serve either in Garrison or Veteran Battalions, or as Special Constables.[2] Their service was *not* to reckon towards increase of pension; but if wounded or disabled in service, the men were to be pensioned as soldiers.

Position of the Staff Officers.

170. The position of the Officers is, firstly, that of accountants to the Crown, in which capacity they give security for the moneys from time to time issued to them for the payment of the Pensioners; and, secondly, that of Officers holding Military Command over men who are liable to military law when they are called out in aid of the Civil Power. For this latter purpose, each Officer holds a Letter of Service, which gives him authority to Command the Local Companies, and directs him to obey such orders as he shall receive from her Majesty, the Commander-in-Chief, or any other his superior Officer.[3] In cases of emergency, Staff Officers may be placed on Court-martial duty; and they would, I apprehend, be liable

[1] Circulars, p. 25. [2] Ib., p. 29. [3] Ib., p. 87.

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to the Mutiny Act and Articles of War for any breach of discipline when engaged in military duty.

171. Upon this Establishment for the Enrolled Pensioners a Reserve Force was grafted in the year 1859, consisting of 20,000 men who had previously served in the Regular Army or in the Army of the East India Company.[1] The Act and Regulations[2] under which the force was formed permitted men who had served their first term of enlistment, or five years of it (having been discharged for any cause other than misconduct, and without a permanent pension), to enrol for such a period as would complete twenty-one or twenty-four years of total service, reckoning two years' service in the Reserve as equal to one year for the completion of the total Army service for Pension. Reserve Force of 1859.

172. The advantages offered were an annual Bounty of 4*l.*, with clothing at stated periods, and during the days of training or service the men were to receive the pay of the Line. Upon the completion of their term of service they were to be entitled to Pension upon the usual scale. Pecuniary advantages to the men.

173. In addition to the services prescribed for the Enrolled Pensioners this force could be called out for permanent duty as soldiers in the Regular Army under the same circumstances that justified the embodiment of the Militia, and the men were bound to serve in defence of the Realm in any part of the United Kingdom until their services were dispensed with by Royal Proclamation. Extent of their Service.

174. The use of this force was to be developed in *time of war*, and for this contingent service the State gave, in *time of peace*, a present, and also a reversionary annuity. In no other instance in Army Administration at that time had the Crown given to soldiers a Bounty in time of peace, for possible service to be performed upon the occurrence of war. To the Crown the expediency of such a contract may be doubtful; and—as I have observed upon the Militia Reserve—it created a certain expense, with an uncertain, because unknown, result.[3] Arrangement of doubtful expediency.

[1] 22 & 23 Vic., c. 42. [2] 9 Dec., 1859. [3] Chap. III., par. 57.

59-60

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The Army Reserve Force Act, 1867.

175. Under these and subsequent Acts, a complete Military Organization has been spread over the United Kingdom; and all the Pensioners, whether enrolled or not, are visited several times periodically throughout the year. The law has, however, been recently consolidated, and a new Reserve Force sanctioned, by Parliament in "The Army Reserve Act,[1] 1867."

Reserves in two Classes.

176. Under this Act, the Crown is enabled to form a Reserve Force in two classes, composed of men formerly in the Regular Army. The men of the first class are not to exceed 20,000, and are to serve with the Army *anywhere*. The men of the second class (including the Enrolled Pensioners and the Reserve men of 1859) are not to exceed 30,000, and are to serve with the Army *only* in the United Kingdom. For the first class, the men must have served in the Regular Army *less than*, and for the second class *at least* their first term of enlistment.

Officers.

177. The Crown may appoint such Officers from the full or half-pay list for the command of the force, as may be deemed expedient.

Training of the Force, and use in aid of the Civil Power.

178. The service of the Reserve is to be an annual training of twelve days, and Class 1 may be trained with the Militia. In aid of the Civil Power the force may be called out by the Secretary of State, or by the Lord-Lieutenant of Ireland, or by the General of the district, on the requisition of any Justice of the Peace. The men may also volunteer for garrison duty.

Permanent Service.

179. Under the same circumstances that the Crown is authorised to embody the Militia, it is also empowered to call out this force for permanent duty. Their call is to be by Proclamation, and the duration of their service for six months after the Peace has been proclaimed.

[1] 30 & 31 Vic. c. 111.

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180. The Regulations[1] under this Act also give the men (other than Pensioners) who form this Reserve, the advantages of a present annuity, and of a reversionary pension for possible future service in time of war. As to Class 1, the physical ability of a man to serve with the Army abroad at an indefinite future period may be doubtful; but if capable and *willing*, the claims of a family may render his service highly inexpedient to the State. Where a contract may be practically annulled by such a change of circumstances, over which the State can exercise no control, any Reserve founded upon it must be a feeble security, though a certain expense. Other objections not unimportant also present themselves, though I forbear to notice them.

Arrangements of doubtful expediency.

181. The strength of the force appears to be, in Officers, 60 in Great Britain, and 26 in Ireland; and in men, up to 31st December, 1868:—

| | Men. |
|---|---|
| 1. Of Enrolled Pensioners .. .. .. | 13,068 |
| 2. Of the Reserve of 1859 .. .. .. | 2847 |
| 3. Of Army Reserve Force, 1867 .. | 2033 |
| | 17,948 |

182. In bringing the subject of the Chapter to a conclusion, the period embraced in it—say the century from the year 1761[2]—suggests a comparison between the Reserve Forces existing in 1761 and in 1861.

Reserve Forces in 1761 and 1861.

In 1761, the English Militia and the Veteran Batalions with limited numbers were the only established Reserve Forces in Great Britain. Volunteers existed only as Local corps, or associations; they came together from the emergency of circumstances—were comparatively untrained—had little or no discipline—and no Parliamentary sanction for their formation. Indeed the Crown and the two Houses of Parliament were not agreed upon the legality of citizens' coming forward to aid the Crown either with their money or service.

[1] 9 May and 1 Aug., 1868.

[2] Par. 103.

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In 1861 the Reserve Forces, as established, embraced a total number of 179,190[1] men (with a statutory power for increase), all trained and disciplined, amenable to Military Law when upon active service; and by law available for the Crown to use as a National force in the defence of any part of the United Kingdom.

[1] 'Army of Great Britain,' 1862, p. 29. See Appendix LXIX (5). The Reserves were low in the year 1861. In the present year they far exceed 179,190; and we are urged by some to consider this force as useless because not under the Command of Officers of the Standing Army, and the Kingdom as therefore utterly defenceless upon invasion. The Navy and National Spirit must indeed have degenerated during the present century, if this be true.

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# APPENDIX.

## NOTES.

### ( A. )

*Chapter* II., *Paragraph* 3.

NOTE UPON THE STATUTE AND COMMON LAW PRIOR TO THE REIGN OF CHARLES I., HAVING REFERENCE TO THE DEFENCE OF THE REALM, AND THE EMPLOYMENT OF SOLDIERS FOR THAT PURPOSE.

THE earliest Act worthy of notice is the Statute of Winchester[1] (13 Edward I., c. 6). This Act obliged every man to have "in his house harness for to keep the peace after the antient assize," and every man between fifteen and sixty years of age was to be assessed and sworn to armour, according to the quantity of his lands and goods, as laid down by the Act. The lowest property qualification was "twenty marks in goods," and the owner was to "have swords, knives, and other less weapons." The Act then provided "for a view of this armeur to be made twice every year in every hundred by two Constables chosen to make the view. The Constables were to present before the Justices assigned, such defaults as they might see, and the Justices were to present at every Parliament unto the King such defaults as they should find, and the King was to provide remedy therein. A warning was given to Sheriffs to take good heed, and to Bailiffs that they follow the Cry with the Country, and after (as they were bounden) to keep horses and armour; and if any did not do so, the default was to be presented by the Constables to the Justices, and by them to the King, and the King would provide a remedy as afore is said."[2] A.D. 1285. Statute of Winchester.

In 1306, Articles of Inquiry[3] were directed to be made upon the Statute of Winchester, to this effect:—

(1.) "If all between the age of fifteen and sixty be sworn to keep

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[1] See 1 Stat. Realm, p. 97. This Act was repealed by 21 Jas. I., c. 28, sec. 11.

[2] 1 Stat. Realm, p. 246.

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the peace: (2.) If they have weapons in their houses, according to the quantity of their lands and goods, for maintenance of the peace according to the Statute: (3.) If Constables do make view of armour in due manner, and of other things belonging to their office or not: (4.) If Sheriffs and Bailiffs have come at Hue and Cry levied; and (lastly) If they have made pursuit for keeping the King's peace, according to the Statute or not."

Articles of Enquiry.

The next Act was one in direct restraint of the power of the Crown and for the protection of the people. It was passed in 1 Edward III. (Statute 2), c. 5, and was in substance as follows:—

A.D. 1326-7.

(Clause 5).[1] "The King will that no man from henceforth shall be charged to arm himself, otherwise than he was wont in the time of his progenitors, Kings of England; and that no man be compelled to go out of his shire, but where necessity requireth, and sudden coming of strange enemies into the realm; and then it shall be done as hath been used in times past for the defence of the realm."

The 7th clause is directed against Commission of Array thus:—

"Whereas Commissions have been awarded to certain people of Shires to prepare men of arms, and convey them to the King into Scotland, or Gascoigne, or elsewhere, at the charge of the Shires, the King hath not before this time given any wages to the said preparers and conveyers, nor soldiers whom they have brought, whereby the Commons of the Counties have been at great charge, and much impoverished; the King will that it shall be done so no more."

The 15th Clause is directed against enlistment by impressment or duress into military service of the Crown, and is in these words:—

"Whereas many in this realm in the time of the King's father that now is, by means of his false and evil Counsellors, have been excited by dures, to bind themselves by writing, to come to the King with force and arms, whensoever they should be sent for, upon pain of life or limb, and to forfeit all that they ever might forfeit; by virtue of which writings divers of this land have been often destroyed: The King considering that such writings were made to the King's dishonour, sithence that every man is bound to do to the King, as to his Liege Lord, all that pertaineth to him *without any manner of writing*, willeth that from henceforth no such writing be made; and that such as be made, by the sight of the Chancellor and Treasurer, shall be showed to the King; and the

[1] 1 Stat. Realm p. 255.

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King shall cause all such as be made against right and reason to be cancelled."

An armed force might exercise under the King's authority the prerogative right of purveyance with great oppression to the people, and therefore the 14 Edward III., stat. 1, c. 19,[1] after regulating purveyance for the King's house, provided:—

"And of great purveyances to be made, as of flesh, fish, and other victuals for the King's wars, and for to victual the castles and towns in Scotland and England, and other places, certain merchants or other good people shall be deputed by the Treasurer to make the said purveyances, without Commissions, and without the King's or other power; so that the people nor none of them be put to sell anything *against their will*."

Granted that men might volunteer from the County force to follow the King in the wars out of England,—it was right that the County should cease to be chargeable with the pay of the Volunteer, and therefore by 18 Edward III. (stat. 2, c. 7), at Westminster, it was enacted, "the men of arms chosen to go in the King's service out of England shall be at the King's wages from the day that they depart out of the counties where they were chosen till their return.[2] In 1351, the 1 Edward III., c. 5, was in effect confirmed by the 25 Edward III. (stat. 8), c. 8,[3] which enacted that "no man shall be constrained to feud of arms other than those which hold by such services, if it be not by common assent and grant made in Parliament."

By 4 Henry IV., c. 13, the 1 Edward III., the 18 Edward III., and the 25 Edward III., were confirmed, and their operation extended to Wales.

The next enactment, the 5 Henry IV., c. 3,[4] was for the security of the realm from invasion, and "ordained and established that the watch upon the sea-coast through the realm should be made by the number of the people, in the places, and in manner and form as they were wont to be made in times past, and that in the same case the Statute of Winchester be observed and kept; and that in the commissions of the peace thereafter to be made, this Article be put in; that Justices of Peace have power thereof to make inquiry in their sessions from time to time, and to punish them which be found in default after the tenor of the said Statute." A.D. 1403-4.

The 7 Henry IV., c. 1, can perhaps scarcely be classed as an Army Statute, as it enacted only:— A.D. 1405-6.

"That the peace within the realm be holden and kept, so that

[1] 1 Stat. Realm, p. 288. [2] Ib., p. 301. [3] Ib., p. 321.
[4] 2 Stat. Realm., p. 144.

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all the King's liege people and subjects might from thenceforth safely and peaceably go, come, and abide, according to the laws and usages of the same realm."

Statute 18 of the same year was an Act of Indemnity, as—

"It was ordained and established that none, of what estate or condition that he be, shall not be in anywise grieved, molested, inquieted, nor endamaged for any of them, or for their journeying or pursuit made with the King at his commandment, for to chastise and punish the riots and insurrections, which hath been diversely made at sundry seasons within the realm, after the coming of our said sovereign Lord the King into the same realm; but that they and every of them be thereof utterly quit, released, pardoned, and discharged for ever."

In the later Statutes notice is taken of service with the King in the *wars abroad*, and enactments are found[1] (1) protecting the soldier from the imposition of his hirer or captain; and (2) for securing his service to the King by severely punishing the crime of desertion. The 18 Henry VI., c. 18, is directed to the first object thus:—

"Item.—For that the King is and hath been well certified of [many] great deceits and falsities which have been done to him, and to his realm by some of the Captains which have before this time indented with the King to serve him in the Feat of War, some beyond the sea, and in divers parts, as they be appointed and bound by their Indentures, and some in his marches on this side the Sea, and their Wages have been truly paid and contented by the King according to their Indentures for them, and for all their retinue, according to their degrees; which Wages many of the said Captains have abused and taken upon them to [deduct from] their soldiers, of some more and some less, so that such from whom they have abetted have not been able to continue their Service, nor perform the same as of right and reason they ought to have done, and peradventure were willing to have done, if they had been fully paid, which hath caused them to fall to Robbery and Pillage, as well on this side the Sea before their going, as beyond the Sea, when they came thither; amongst other things it hath been a great cause of long continuance of the War, and great damage and loss which hath fallen to the [seignories and countries of the King] in his Obeisance beyond the Sea, and not only that, but loss also of great Treasure which hath been granted to the King and paid in the form aforesaid for the Defence of his Land. The King, willing against such damages and losses to provide a remedy in this behalf, hath ordained by the authority aforesaid: That no

[1] This Act was repealed by 26 & 27 Vic., c. 125; and see 14 Parl. Hist., p. 458.

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Captain which hereafter shall have the conduct of such retinue, and shall receive the King's wages for the same, shall abate of his Soldiers, nor any of them, any part of their wages, except it be for their clothing; that is to say, if they shall be waged for half a year, ten shillings a gown for a Gentleman, and six shillings and eightpence for a Yeoman, upon pain of twenty pounds for every Spear, and ten pound for [a] Bow to the King [from whom he did abate upon the tenour of the same]."

The 19th chapter of the same Statute is directed to the second object:—

"Seeing divers and many Soldiers before this Time, which have taken Parcel or Half their Wages of their Captains, and so have mustered and been entered of Record the King's Soldiers before his Commissioners, for such Terms for which their Masters have indented, have sometime presently after their Muster, and the Receipt of part or of the whole of their Wages, departed and gone where they would, and have not passed the Sea with their said Captains, and some passed the Sea, and long within their Terms departed from their Captains and the King's Service, without [apparent Licence] to them granted by their said Captains, whereof hath grown so great Damage to the King and to his Realm, and so many Inconveniences, which cannot easily be expressed, as of long Time the Experience hath shewed; and the which Soldiers so doing, as much as in them was, [decayed] the Honour and Reverence of the King, and have been many Ways great Causers of the Losses which have ensued in his Lands and Seignories beyond the Sea, and the [Adventure] also of the Persons of the Lords and Captains which did conduct them."

The Act then provides,—

"That every Man so mustering and receiving the King's Wages, which departeth from his Captain within his Term, in any Manner aforesaid, except that notorious Sickness or Impediment by the Visitation of God, which may reasonably be known, suffer him not to go, and which he shall certify presently to his Captain and shall repay his Money, so that he may provide him for another Soldier in his Place, he shall be punished as a Felon; and that the Justices of the Peace shall have Power to inquire thereof, and to hear and determine the same: And likewise hath ordained by the same Authority, That no Soldier, Man of Arms, or Archer, so mustered of Record, and going with his Captain beyond the Sea, shall return into England, within the Term for which his Captain [hath retained him], nor leave his Captain there in the King's Service, and in Adventure of the War, except that he hath reasonable Cause shewed by his Captain and by him to the Chief in the Country having

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[Royal] Power, and thereupon shall have Licence of the said [Captain], witnessed under his Seal, and the Cause of his Licence, and who that so doth muster of Record, and come without Letters Testimonials of the [Captain], as is said, within his Term on this side the Sea, that the Mayors, Bailiffs, and other the King's Ministers, at what Port or Place they shall arrive, shall have Authority to put them in Arrest, and them there to keep until it be of them inquired; and if it be found by Inquiry before Justices of the Peace, and proved that they have so mustered of Record, and departed from their Captains aforesaid without Licence, as afore is said, that then they shall be punished as Felons."

Even in Lord Coke's time the provisions of this Statute, from change in the Military System, had become obsolete. "This Statute has," he said, "become of little force or use, for the ancient manner of retainer of Souldiers whereunto that Act referreth is utterly altered. For then Knights or Gentlemen expert in War, and of great Revenues and livelihood in their Country, covenanted with the King to serve him in his war for such a time with such a number of men: and the Souldiers made their covenant with their Leaders or Masters, and then they were mustered before the King's Commissioners, and entered of Record before them: and that was certified into the Exchequer: and thereupon they took their wages of the King, as it appeareth by many precedents of the Exchequer, and may be gathered by the preamble and body of the Act, and by the Register, where it appeareth, that a Writ was framed upon that Statute, directed to a Serjeant-at-arms, ad capiend' conductos ad proficiscend' in obsequium, &c., and this was thought an excellent Military policy, that the Souldiers (part whereof were of their own tenants) should be chosen and led by Knights and Gentlemen of quality of their own country, with whom they must fight in war, and live withall in peace when they returned into their country, in respect whereof the Souldier would the more chearfully and obediently follow his Leader, and the Leader would the more respectively and lovingly use his Souldiers when he was abroad."

Two Statutes of Henry VII.'s reign imposed a special obligation to Military Service upon a new class of persons. In the

A.D. 1495.

11 Henry VII., c. 18, the duty of every subject was stated to be to serve and assist his Sovereign at all seasons where need shall require, and the Act then imposed the duty of giving attendance upon the King to defend his royal person when he shall go in wars for the defence of the realm, or against his rebels and enemies, upon persons within the realm holding fees, offices, or annuities under the Crown, and declares these offices forfeited in case of their default in such service. By the 19 Henry VII., c. 1, a larger

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obligation, though of a similar nature, was imposed, under a like penalty, upon the holders of honours, lordships, or lands, under Letters Patent from the Crown. These persons were to attend the King daily when he should go to the wars, either within his realm or elsewhere for the defence of the same realm, or against his enemies or rebels.

They were to serve the King in his journey or voyage, and "to give their attendance upon his Grace in the same, and not to depart without his special Licence in writing under the King's Sign Manual and Signet, or under his Great Seal or Privy Seal, or else till after general Proclamation be made that they shall depart."

The Act then provided each "person so giving attendance should have the King's wages from the time of coming from his house toward the King, while with the King, and from the King home again at the time of departing, at the rate of twenty miles for a day."

The legislation from this period had reference to the prosecution of War upon the Continent of Europe, rather than the defence of the realm at home, as the next Statute relating to Desertion,[1] which was passed in 1491, recites "the determination of the King to pass over the sea into his Realm of France, and to reduce the possession thereof;" and then enacts,—

"Yf any Souldeour being no Capteyn ymmediatly reteigned with the King, which herafter shalbe in Wages and reteyned or take any prest to ȝve the King uppon the See, or uppon the londe beyonde the See, depte outte of the Kinges ȝvices w'out licence of his Capteyn that suche departyng be taken demed and ajuged felony, and that he so offendyng suffre for the seid offence punysshement and execucion of felony: And for asmoche as his offence stretchith to the hurt and jopdie of the King oure Soȝayn Lord, the nobles of the Realme and of all the cõen wele therof, that therfor he or they so offendyng enjoye not the benefice of his Clergie."

Again, in the Act of 3 Henry VIII., c. 5, there is a recital "that our Sovereign Lord entendeth, by the Grace of God, to send over the sea a great army, trusting thereby not only to preserve this his Realm in his antient fame and honor, but also to set in perfect peace and tranquillity his subjects of the same, and the better to be disposed to serve God;" and then follows a similar enactment against deserters to that contained in 7 Henry VII., with a proviso—worth notice—"that this Act extend not to any captains or soldiers that now be or hereafter shall be retained within the towns of Calais, Berwick, and Wales, or any of them or the marches of the

A.D. 1511-12.

[1] 7 Hen. VII., c. 1.

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same, and that this Act be not prejudicial nor hurtful to the said captains, petty captains, nor any other having under them retinue of soldiers, nor any of them, for non-payment of the King's wages to their household servants and other to whom they shall daily find and give meat and drink during the said service of war."

In the reign of Edward VI.,[1] an Act was passed "touching the true service of captains and soldiers;" and it is worthy of notice that the preamble states the obligation to military service in broader terms than are to be found in previous Statutes thus:—

"The King's loving and obedient subjects, *according to their bounden duties*, have sent forth as well into parts beyond the seas, and to the seas, as also into Scotland, and other places diverse *both within this realm as without this realm*, many able persons or soldiers well furnished to serve the King in his wars, to their great charge and cost." The principal objects of the Statute[2] being to secure (1) the property entrusted to the soldier; (2) his service; and (3) the due discharge of his pay, subject to certain stoppages for clothing, food, and other necessaries.

A later Act in the same reign (3 and 4 Edward VI., c. 5) sanctioned the appointment of lieutenants in each county or shire.[3]

The first of the two Statutes of the succeeding reign was only of temporary duration. The 4 and 5 Philip and Mary, c. 2, in general terms repealed all the previous Statutes concerning the keeping of horses and armour, and made provision for the establishment of a National force at the cost of His Majesty's subjects, according to their property.

This Act was expressly repealed by the 1 James I., c. 25, s. 7, which thereby revived all the earlier Statutes which the 4 and 5 Philip and Mary had repealed.

The Statute following the last in Philip and Mary's reign was for taking musters, and had in it some provisions that bear an analogy to those found in the Mutiny Acts of later reigns. Thus, it gave authority to captains and superior officers for the punishment of their soldiers or subordinate officers while in service, but for other offences the jurisdiction of the civil magistrate was upheld.

The terms in which the Act was framed recognised the authority of the Crown to impress soldiers to serve in the wars, or otherwise, for the defence of the realm, as the 2nd section ran thus:—"If any person appointed by the King and by commission, letters, or otherwise authorised to levy, muster, *or make* any men to serve in the wars, or otherwise in defence of the realm," do receive money for

[1] 2 & 3 Edward VI., c. 2. [2] 4 Stat. Realm, p. 39. [3] See Chap. III.

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excusing any person from service, the offender should forfeit ten times the amount of the money so taken.

This Act was never expressly repealed unless by the 2 Geo. III., c. 20, but its provisions must have soon become obsolete.

The defeat of the Spanish Armada was the first service that called forth the *gratitude* of the country towards its soldiers, then acting, as was the case for many years after, as marines on board the Fleet; and the 35 Elizabeth, c. 4,[1] was the first Statute that made any provision for the relief of wounded soldiers. The preamble stands in these terms:— A.D. 1592-3.

"Forasmuch as that it is agreeable with Christian Charity, Policy, and the Honour of our Nation, that such as since the 25th of March, 1588, had ventured their lives and lost their limbs, or disabled their bodies, or shall thereafter have ventured their lives, lose their limbs, or disabled their bodies in the defence of Her Majesty and the State, should at their return be relieved and rewarded, to the end that they may reap the fruit of their good deserving, and others may be encouraged to perform the like endeavours."

It then provides, "That for the relief of sick, hurt, and maimed Soldiers and Mariners, having been pressed and in pay for Her Majesty's Service, certain weekly rates shall be levied in each parish, and paid to the Treasurer of each County." That "Every such Soldier and Mariner was to repair to the Treasurer of the County out of which he was pressed, or, if he were no pressed man, to the Treasurer of the County where he was abiding by the more part of three years before his departure to serve, or of the County where he was born at his election;" and the Treasurer was to grant the relief upon the certificate of his service from his Commanding Officer, until the next quarter session, whereat the Justices should make an instrument of grant of the same or like relief, to endure as long as this Act should stand in force. The amount of pension was limited—soldiers or mariners, having not borne office, were to receive a sum not exceeding a yearly pension of 10*l.*; those who had borne office, under the degree of a lieutenant, a sum of 15*l.*; and those who had served in the office of lieutenant, a sum of 20*l.*

If the treasurer wilfully refused to distribute or give any relief according to the form of the Act, he was liable to be fined, and any soldier or mariner found begging was for ever to lose his pension, and be punished as a rogue and vagabond.

[1] The provisions made by this Act were continued by the following Statutes:— 39 Elizabeth, c. 21; 43 Elizabeth, c. 3; 1 James I., c. 25; 21 James I., c. 28; 3 Car. I., c. 5.



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The evils of vagrancy when practised by this class of persons are shown in the preamble, and by the punishments declared in the next Statute to be mentioned in this reign, viz., the 39 Elizabeth, c. 17,—"An Act against Lewd and Wandering Persons pretending themselves to be Soldiers or Mariners." The preamble sets forth: "Whereas divers lewd and licentious persons contemning both Laws, Magistrates, and Religion, have of late days wandered up and down in all parts of the Realm under the name of Soldiers and Mariners, abusing the title of that honourable profession to countenance their wicked behaviours, and do continually assemble themselves weaponed in the high ways and elsewhere in troops, to the great terror and astonishment of Her Majesty's true subjects, the impeachment of Her Laws, and the disturbance of the Peace and tranquility of this Realm. And whereas many haynous outrageous Robberies and horrible Murders are daily committed by these dissolute persons, and, unless some speedy remedy be had, many dangers are like by this means to ensue and grow towards the Commonwealth." A.D. 1597-8.

The Act then provides, that "all idle and wandering soldiers or mariners, or idle persons who then were or thereafter should be wandering as soldiers or mariners, should settle themselves in some service, labour, or other lawful course of life," &c., upon pain of suffering, as in case of felony, without any benefit of clergy to be allowed.

But, independently of these Statutes, the law had provided other ways and means for the Defence of the Realm, which Mr. St. John, in his argument upon the Ship Money Case, arranged thus:—

I. By tenure of lands.

1. For services in kind; as,—

*Knight Service.*[1]—Every one that held by this tenure, from a whole Knight's fee to any part thereof, had to find a man completely armed for the War. He that held by a whole fee to be forty days in service; and he that held by a moiety twenty days, and so on in proportion.

*Grand Serjeanties.*[2]—Some whereof were to carry the King's Banner, some to summon the King's tenants, some to be of the vanguard, some to be of the rear, some to serve in Wales, some in Scotland, some in the four seas, and some in the Cinque Ports.

*Cornage.*—To give warning of the enemies coming into the Kingdom.

*Castle Guard.*[3]—These tenures were (according to Littleton,

[1] 3 How. Stat. Tri., p. 866. [2] Ib., p. 867. [3] Ib., p. 868.

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11,000 in number) to defend the Castles within Forts and Bulwarks, when the enemy entered the Realm.

*Petty Serjeanties.*[1]—For finding of all sorts of Armour for the War.

2ndly. For supply of the wants of an Army, as,—

1. Villains.
2. Free Socage.
3. Antient demesne or by Burgage within Cities or Borough Towns.

II. The Prerogative Revenue.[2]

For the extraordinary occasions of defence, as,—

1. Treasure Trove.
2. Royal Mines.[3]

III. The particular supplies of money,[4] both ordinary and extraordinary, the latter coming from Parliament when the ordinary supplies fail.

Mr. St. John then went on to show that allegiance is an act of reciprocation, binding the Subject, on the one hand, to Tribute and subjection, and the Crown, on the other, to the charge of Protection by the expenditure of these means.[5]

Then he proceeded to prove that the Crown without Parliament could not tax the people for their own defence.

1. For setting forth the Land Forces.
2. For making and maintaining of Forts and Castles.
3. For Victuals for a defensive Army.
4. For maintenance of Prisoners of War.

That the Crown did, in fact (whether rightly or wrongly), impress Subjects for the Wars abroad cannot be doubted, as the first Statutory provision made for wounded Soldiers[6] speaks of such as have been "pressed," while the 16 Car. I., c. 28, is directed against the practice, and by the preamble declares it to be illegal.

For service in the Navy, such a power has in modern times been adjudged to be constitutional.

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[1] 3 How. Stat. Tri., p. 871. [2] Ib., p. 873. [3] Ib., p. 879. [4] Ib., p. 883. [5] Ib., p. 879. [6] 35 Eliz., c. 4.



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# ( B. )

*Chapter* III., *par.* 2.

## List of Early Statutes relating to the Militia.[1]

Apart from the obligation to military service arising from tenure of land, the statutory obligation resting on all subjects is to be found in the following enactments:—

The 13 Edward I., c. 6 (Stat. of Winchester), obliged every man between fifteen and sixty, to provide armour, &c., to keep the peace.

In the 34 Edward I., articles of inquiry as to the observance of this statute were issued.

The 1 Edward III., stat. 2, c. 5, declared that no man should be charged to arm himself otherwise than was wont, and that no man be compelled to go out of his shire, but on the sudden coming of strange enemies, and then only as "in times past," for the "defence of the realm."

The 25 Edward III. declared that no man (save those which held by such service) should be constrained to find arms if it be not by grant made in Parliament.

The 5 Henry IV., c. 3, establishes a watch upon the coast, through the realm as in times past, and that the Statute of Winchester be observed and kept.

The 4 Philip and Mary, c. 2, for the better furniture and defence of the realm, repealed all former Acts for finding horses, armour, &c., but imposed on the owners of land an obligation according to their estate, "to find, keep, sustain, and maintain within the realm of England" horses and armour, &c.

Provisions were made for the view of armour, and for inflicting penalties on defaulters.

If it should fortune that the said furniture of armour aforesaid, or any part thereof, at any time thereafter, be lost or spent in any service or defence of this realm, or else the horse be killed or destroyed, then the owner was not to be fined if he provided himself again within one year; but this Act was repealed by the 1 James I., c. 25, s. 7, which, as the Long Parliament contended, revived all the previous statutes repealed by the 4 and 5 Philip and Mary, c. 2.

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[1] As to the earlier Assize of Arms, see Lord Hale's note, 1 Co. Litt., 71 *a*.

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## ( C. )

*Chapter* III., *par.* 2.

### List of Early Statutes relating to the Army, other than the Militia.

The following statutes relate to the King's soldiers or army, as differing from the constitutional force of the Militia, a distinction recognised by Lord Hale (Note at 1 Co. Litt., 71*a*), and by Mr. Hallam.

1. 1 Edward III., stat. 2, c. 5 and 7, referring to commissions of array or impressment for raising men for the Scottish and other wars, and declaring that the soldiers raised shall be at the King's cost.

2. 18 Edward III., stat. 2, c. 7, which again imposes the cost of men chosen to go out of England, on the King, and not on the county.

3. 4 Henry IV., c. 13, which imposes on the holders of places and pensions from the King, the same obligation of attending him in his wars, as rested on landowners under the Crown; and see also 11 Henry VII., c. 18 and 19, and Henry VII., c. 1.

4. 18 Henry VI., c. 18, which relates to indentured soldiers. See also 7 Henry VII., c. 1 (case of soldiers), and 3 Henry VIII., c. 5 (3 C. Rep., 310).

5. 7 Henry VII., c. 2, granting certain exemptions from process and the power of devising lands to persons being in the King's wars beyond the seas; and see the same enactment in 3 Henry VIII., c. 4, 14 and 15 Henry VIII., c. 14.

6. 2 and 3 Edward VI., c. 2. "An Act touching the true service of Captains and Soldiers," being in the nature of a Mutiny Act.

7. 4 and 5 Philip and Mary, c. 3. "An Act for taking of Musters," which appears to relate both to the King's Army and the Militia service.

8. The 35 Elizabeth, c. 4, which provides the first statutory relief for wounded soldiers.[1]

9. The 39 Elizabeth, c. 17, which punishes wandering soldiers.

10. The 16 Car. I., c. 28, which declares impressment by the Crown illegal; but authorises Justices of the Peace, by order of Parliament, to impress all men not under eighteen or above sixty years for the war.

[1] Parl. Hist., p. 864.

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# ( D. )

*Chapter* III., *par.* 50.

## A Table of Dates shewing the Time in which the Militia could be raised by Ballot.

Under the 23 & 24 Vic., c. 120, the provisions of which are applicable to England, the time is materially shortened,—

1. By having the quotas for the sub-divisions of counties fixed by Order in Council.[1]

2. By having the number of balloted men to be raised in each subdivision (to make up the full quota) fixed by the Secretary at War.

3. By having the places for subdivision meetings fixed by the Lords-Lieutenant.

By sec. 7 the ballot process commences on the 2nd Monday in September (say 10th September).

17*th Sept.*—All notices are to be delivered by this date to householders, requiring them to send in lists of residents, being men between the ages of 18 and 30 years.—Sec. 7.

1*st Oct.*—The lists are to be made up by the overseers within fourteen days (say by this date).—Sec. 9.

3*rd Oct.*—On this day (say the 1st Wednesday in October) the 1st subdivision meeting is to be held, and all the lists are to be made up for Ballot, and another (2nd) meeting appointed in seven days (say for the).—Sec. 11.

10*th Oct.*—The second subdivision meeting is held on this day for Ballot of twice the number of men that are wanted, and to appoint another (3rd) meeting in seven days (say for the).—Sec. 14.

17*th Oct.*—The balloted men (being summoned by post and by notice on the church door) are to attend to claim exemption, to be surgically examined, and to be sworn in and enrolled.—Sec. 16.

The enrolled men are to attend in seven days (say on the).

23*rd Oct.*—To be trained for twenty-eight days, so that in five weeks and two days (or in less time if the County Officers use greater diligence), the men are balloted, enrolled, and brought out for training.—Sec. 19.

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[1] See 15 & 16 Vic., c. 50, sec. 9, as to the quotas of Counties.

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# ( E. )

*Chapter* IV., *par.* 1.

## A SHORT ACCOUNT OF THE CORPS OF GENTLEMEN-AT-ARMS AND YEOMEN OF THE GUARD.

### *As to the Corps of Gentlemen-at-Arms.*[1]

HENRY VIII. (1509) constituted fifty in number to be "chosen of gentlemen that be comen and extracte of noble blode." Each was to have "all habilements mete and necessary, with *two* double horses at the least for a man of armes," and to "furnish two good archers well horsed and harnessed." They were to obey "in every condition the captain;" and to make their "abode in such places as the Kinge's grace shall appoint."

Charles II., by warrant March 17, 1670, reduced their number to *forty* (styled a Band of Pensioners) each receiving 100*l.* per annum. The King, and not the Captain, was hereafter to give away the appointments, but by a warrant of April 6, 1677, the appointments were restored to the Captain, and the sale of vacancies or of resignations (subject to the King's approval of the gentlemen) appears to have been allowed.

James II. by warrant of February 10, 1684, gave the members a claim to be advanced to be commissioned officers of the army, "preferably to all other persons whatsoever."

It is under the Lord Chamberlain, who communicates the pleasure of the Crown to the Captain. Their pay is provided for in the Civil List, and an establishment is settled by the Treasury at the commencement of every reign.

On appointment the Captain receives a gold-headed staff, and the Lieutenant, the Standard Bearer, the Clerk of the Cheque, and Harbinger, each a silver-headed staff from the hand of the Sovereign, which is surrendered on resignation.

The Captain ranks after "Captain of the Horse Guards in waiting, and before the Captain of the Yeomen of the Guard." The Gentlemen are styled "Esquires," and claim to rank with captains of the army.

In the Muster Roll of the King's Forces (printed in 1684) this corps was included, and it still is kept in the Army List.

[1] Account of, by Curling (1850): Richard Bentley, London.

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In April and May, 1861, the corps was re-organised by Her Majesty, and purchase was to cease. All future vacancies are to be filled by officers of the army, under the following circular:—

"*Horse Guards, 25th May*, 1861.

"Her Majesty having been pleased to approve of a reorganisation of the Corps of Gentlemen-at-Arms, the following extract of the regulations which will be adopted henceforth in reference to appointments thereto, is published for the information of officers of the Army.

"The purchase of commissions is to cease, compensation being made to existing interests from the Reserve Fund by the Secretary of State for War, and no officer who may be appointed to the corps henceforth will be allowed to sell his commission.

"Candidates for appointment to the corps must be officers of the Army, not under the rank of Captain with twenty years' full pay service, and if on full pay to be placed on half pay, if entitled to it by the provisions of the Royal Warrant, previous to appointment.

"Captains on retired full pay to be eligible; also Captains having superior brevet rank.

"Candidates not to be above fifty years of age, nor under 5 ft. 6 in. in height.

"Officers who have sold out of the Army are ineligible.

"Any officer who may possess the above qualifications, and is desirous of being a candidate for appointment to the corps, should address his application to the Military Secretary, Horse Guards.

"By Order of His Royal Highness
"The General Commanding-in-Chief.

"J. YORKE SCARLETT,
"*Adjutant-General.*"

*As to the Yeomen of the Guard.*[1]

This corps was instituted in 1485 by Henry VII. It now consists of 100 men, with an addition of 40 warders of the Tower; the latter being old soldiers or non-commissioned officers appointed by the Constable of the Tower.

The corps is under the Lord Chamberlain, and their payment provided in the same manner as the Corps of Gentlemen-at-Arms.

The officers' commissions were formerly purchasable; but in August, 1861, purchase was abolished, and the corps reconstructed under the following circular:—

[1] 'Curealia,' by Samuel Pegge, London, 1791; 7 Parl. Hist., p. 514.

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"*Horse Guards, 6th August*, 1861.

"The Queen has been pleased to approve that the purchase of the Officers' commissions in the Corps of the Yeomen of the Guard should cease at the earliest possible moment, and to order that the future vacancies in the corps should be filled up by officers of the Army of long and good service, to be selected from a list kept at the Horse Guards by the General Commanding-in-Chief; the recommendation being made to Her Majesty in each case, as now, by the Captain of the corps.

"Any of the officers who acquired their commissions by purchase, and are desirous of retiring from the corps, upon communicating with the Captain, will receive from the Secretary of State for War an amount in compensation thereof, and a successor will be appointed to the vacancy, who, however, it must be clearly understood, will not be allowed to sell his commission.

"The Lieutenant in future to be appointed must have been at least a Colonel or Lieutenant-Colonel in the Army, or Royal Marines, or in the Indian army.

"The Ensign and the Clerk of the Cheque, a Lieutenant-colonel or Major in the army, or Royal Marines, or in the Indian Army.

"The Exons, Captains in the Army, or Royal Marines, or Indian Army, according to the present regulations of the corps.

"It is further Her Majesty's pleasure that no officer should be appointed to the corps above the age of fifty.

"Whenever an officer becomes, in the opinion of the Captain, permanently incapacitated to perform the duties of the appointment, he will be required to resign it, or half his salary will be paid to a substitute selected as already described, and who will succeed to the next vacancy in the corps.

"This order is not to be retrospective, or to apply to those officers of the Army now in the corps, who have been appointed on the recommendation of the General Commanding-in-Chief.

"It is to be clearly understood that officers who may be appointed for the future, under the above regulations, will be, as heretofore, entirely under the command of the Captain of the corps.

"Any officer who may possess the above qualifications, and is desirous of being a candidate for the corps, should address his application to the Military Secretary, Horse Guards, for the purpose of its being laid before His Royal Highness the General Commanding-in-Chief, with a view to such officer, if duly qualified, being recommended, through the Captain of the corps, to Her Majesty for appointment.

"By Order, "JAMES YORKE SCARLETT,
"*Adjutant-General.*"

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As to both of these corps, their members, as attendants upon the Sovereign, are privileged from arrest;[1] but it must be considered as clearly laid down, that the privilege, wherever it exists, is for *the benefit of the Crown*, and *not for the individual;* and hence the Common Law Courts have in several instances refused to discharge a defendant under arrest where the requirements of the public service did not call for his immediate discharge. "As there is," said Lord Tenterden,[2] "no great necessity for the services of these officers, the occasions being but rare when they are called upon, and when they occur, not requiring the attendance of them all, I do not think that any inconvenience will result to His Majesty's service, by our leaving the defendant to sue out his writ of privilege."

In another case, where one of the warders of the Tower, having given bail and thereby gained his liberty, came to the Court on motion for discharge from bail, the Court refused to decide whether or not he was entitled to be discharged. "If," said the same Judge,[3] "the defendant in this case were in actual custody, so that His Majesty might be likely to lose the benefit of his services if they were required, or if the defendant was likely to incur the forfeiture of his office by reason of his being prevented from discharging the duties of that office, there might be good ground for contending that this Court ought to decide the question of privilege on motion; but it appears that the defendant is not in custody. Assuming, therefore, that he has the privilege for which he contends, we think that we shall best exercise our discretion by leaving him to enforce it by a writ of supersedeas."

The method by which this privilege may be obtained from the Court, is either by motion for the defendant's discharge, or by a writ of privilege, or by writ of supersedeas. Where the claim is one free from doubt, the course is by motion. "If the privilege exists, it is for the benefit of the Crown,[4] and not of the individual; and although the Court certainly have in some instances discharged defendants claiming privilege on motion, it will be found, on examination that those were cases where there was no doubt as to the

[1] The Warrant of Appointment to the Yeomen of the Guard states on the face of it that it exempts the holder from arrest or detention without leave from the Lord Chamberlain, and, in 1817, the Court of Queen's Bench went so far as to discharge from custody, on motion, the lighter of the fires and candles of the guard in the King's palace.—Sard *v.* Forrest, 1 B. and Cr., p. 139; Forster *v.* Hopkins, 2 Chitty, p, 46; 6 M. and Sel., p. 271.

[2] Luntley *v.* Battine, 2 B. and Ald., p. 237.

[3] Bigwood *v.* Davies, 6 B and Cr., pp. 85-6.

[4] 2 B. and A., p. 236.

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existence of the privilege claimed." And in Bartlett *v.* Hebbes,[1] where the question was whether the defendant should be discharged on motion, or put to sue out his writ of privilege, Lord Kenyon said, "with respect to the mode of application it was finally settled in Pitt's case, that a person entitled to privilege might be discharged on motion; and although that is discretionary in the Court under the circumstances, as where there is any doubt whether the party applying be really such a person as is entitled to the privilege, or other unfavourable and suspicious circumstances, yet here, it being admitted that the defendant is a servant of the King, there is no ground for refusing to discharge him on motion."

In 1814, a doubt being raised whether the Yeomen of the Guard came within the description of persons "serving in any of His Majesty's forces," and consequently exempt from service in the Local Militia, the Law Officers, on being referred to by Lord Sidmouth, reported in these terms:—

"That as the Yeomen of the Guard neither perform the duties, nor receive the pay of soldiers, nor are subject to the Mutiny Act, they cannot be considered as coming within the description of persons 'serving in any of His Majesty's forces,' and consequently are not in that respect entitled to be exempted from serving in the Local Militia."

"*Lincoln's Inn, 29th July*, 1814."

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## ( F. )

*Chapter* IV. *par.* 3.

### The Guard to the Sovereign.

It has always been the policy of the law to guard the Sovereign's palace[2] in an extraordinary manner from "intrusion," so that ordinary theft was declared by an early Statue to be felony, and even the Sheriff cannot enter with the process of King's Courts without the previous sanction of the Lord Chamberlain. It is, I apprehend, upon this principle that the Guards have been attendant

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[1] 5 Term Rep., p. 689.

[2] As to the definition and boundaries of a palace, see 33 Hen. VIII., c. 124, sect. 10; Re Elderton, 6 Mod. Cas. 73; Lord Kenyon in King *v.* Stobbs, 3 Term Rep. p. 744.

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upon the Sovereign with the continuous sanction of Parliament from the reign of Charles II.[1]

One of the charges laid against Lord W. Russell in 1683 was his design "to seize and destroy the Guards for the preservation of the person of our lord the King." At the date of that conviction there was no other statutory authority for the presence of the Guards as attendants upon the Sovereign save the two statutes in Charles's reign, and there was much controversy upon the question whether or not a guard to the King was known to or admitted of by the Common Law.[2]

In 1711, the Secretary at War issued these orders for their constant attendance at the palace:—

"GENTLEMEN, "*Whitehall, 9th August*, 1711.

"Her Majesty having thought fit that a field officer of the Foot Guards be always in waiting upon her royal person, in like manner as she is attended by an officer of the Horse Guards, I am commanded to acquaint you with Her Majesty's pleasure herein, and that she expects a compliance therewith as soon as may be.

"I am, Gentlemen, your most humble servant,

"G. GRANVILLE."

"*Officer-in-chief with the two Regiments of Guards.*"

"SIR, "*Windsor, August 15th*, 1711.

"Her Majesty has commanded me to signify to you, that it is Her Majesty's pleasure a field-officer belonging to one of her regiments of Foot Guards do duty at her palace, as was formerly practised in the reign of Charles II., for the better preservation of good order and discipline near her royal person.

"I am, Sir, your most humble servant,

"G. GRANVILLE."

"*Major-General Holmes.*"

One of the admitted and declared necessities for the retention of soldiers in pay was as a guard for His Majesty's person,[3] and the Lords, in protesting against the numbers of the Standing Army in 1723, did so[4] "as consisting of a greater number than what they took

[1] See the Acts for disbanding the Army save the Guards of the King, 12 Car. II., cap. 15; and 18 & 19 Car. II., cap. 1, sect. 76.

[2] See 9 How. Sta. Tri., p. 730 against, and, at p. 765, Sir B. Shower's argument in favour of a guard.

[3] The preamble to Mutiny Act, 4 Geo. I., and the Soldiers' "Oath of Fidelity."

[4] 8 Parl. Hist., p. 61.

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to be necessary for the guard of the King's person and defence of the Government."

That the Sovereign should never be left without a guard, was the declaration of Parliament when in 1735 it enforced the constitutional rule of absolutely prohibiting the troops from being present during Parliamentary elections, for it is expressly declared by the Act[1] that it shall not extend to any troops attendant as guards upon the Sovereign. The same principle was again laid down by the 10 & 11 Vic. c. 21.

That the *Palace* should never be left without a guard, Parliament from the year 1793 has provided at the public cost a table for the officers of the Guards on duty there, and an annual vote has since been taken for its maintenance.

The relationship existing between the Sovereign and the Guards is set forth in the following order:—

"*St. James's Palace*, 31 *July*, 1830.

"The King, being desirous that his Guards should enjoy all the advantages which can be derived from the command and care of the General Officer commanding the Army in chief, and that their duties upon his Majesty's person, should be conducted upon the same principles as those of the troops of the line, is pleased to order, that the Colonels of the two Regiments of Life Guards, and the Colonel of the Horse Guards, shall hereafter respectively make all their applications respecting promotions, exchanges, leaves of absence, &c., to the General commanding the Army in chief, in the same manner as the Colonels of the three Regiments of Foot Guards; and the General commanding the Army in chief will give such orders as he may think necessary for the performance of the duties of honour over His Majesty's person, and of other duties within the metropolis and elsewhere, as well to the Horse as to the Foot Guards, and to all other troops.

"The Gold Stick will continue to perform the duty of that office, and will receive from His Majesty in person the parole and countersign; and will report to His Majesty in person as usual, as well as to the General Officer commanding the Army in chief. He will also specially report to His Majesty the receipt of any order from the General Commanding-in-Chief."

[1] 8 Geo. II., c. 30, sect. 3.

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# ( G. )

*Chapter* VI., *pars.* 24 *and* 36.

## As to Half-pay, Pension, and other Non-effective Allowances granted to the Army since the Revolution.

### *As to Pensions for Soldiers.*

These grants from Parliament date from the reign of William III., and their disposition is made through the Commissioners of Chelsea Hospital. The earliest regulations that need be mentioned are those of George I., issued on the 16th June, 1716, in the form of instructions to those Commissioners, of which the substance may be thus paraphrased:—

Geo. I.'s regulations.

1. That the officers of the hospital were to be those who, by their services and sufferings were found qualified, and that the women admitted to office were to be only the widows of such persons.[1]

2. That the circumstances of non-commissioned officers and soldiers claiming a provision in the said hospital, or out-pension, in consideration of being wounded or disabled in service, should be carefully examined by the Commissioners.

3. That the invalids were liable to be draughted to do duty in garrison, but if returned as unfit for duty, they were to be re-admitted for pension.

4. That no officer was to be admitted as an officer to the Invalid Companies unless he had been disabled by wounds in the service, or had served twenty years, and not having been dismissed or sold out of the service.

5. That the Commissioners should agree on one day of the week for their constant meeting; that the day should be published, so that all persons concerned should be able to apply to them without disappointment.

Until the year 1806, the soldier's claim to pension rested as it now rests (with the exception of such claims, if any, as may exist under the 47 Geo. III., c. 69) *solely* on Royal Warrants and annual votes on supply; but in this year Mr. Windham's Act was passed for making better provision for soldiers, "by securing to invalid, disabled, and discharged soldiers

Mr. Windham's Act (47 Geo. III. c. 69).

[1] Mis. Bk. 522, p. 82.

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such pensions and allowances as they might become entitled to by reason of their service, or of their having become invalid or disabled." The 3rd section enacted "That every soldier who shall become entitled to his discharge by reason of the expiration of any period of service fixed by any orders and regulations made by His Majesty in that behalf, or shall have been discharged by reason of being an invalid or disabled, or having been wounded, shall thereupon become *legally entitled* to receive such pension, allowance, or relief as shall have been fixed in any orders and regulations made by His Majesty in relation to such cases respectively, and in force at the time of his enlistment, and for the payment whereof money shall have been voted by Parliament, and every such soldier may claim to be paid, or receive the same under the provisions of this Act, or any rules or regulations made in pursuance thereof by the Commissioners."

The regulations of October, 1806 (issued in pursuance of the Act), contained rules as to pensions, &c., and without following, them out in detail, it may be said:— Pension Regulations of Oct., 1806.

That they fixed three periods of service, say of seven years, making up a total service of twenty-one years; and as to claim of pension for service, they conferred that right after the second and third periods had expired; that no pensioner was to be liable to be called out for garrison or other duty who had completed his three full periods of service; that soldiers discharged "as disabled or unfit for service were to be pensioned, but "no soldier, whose disability or unfitness had arisen from vice or misconduct, was to be allowed to claim such pension as of right; but Mr. Windham desired to confer a *legal*[1] right to pension, and to release the soldier from his dependence on the bounty of the Crown, and from the caprice of his Commanding Officer (who could grant or withhold his certificate of good conduct to entitle the soldier to a pension).

It must be admitted that the experiment was a most costly one to the public. The Finance Committees of 1817 and 1828 condemned its operation. The former recommended its repeal, and a reversal of the policy of the Act:—1. That the pension to be in each case considered as flowing from the bounty of the Crown, as previous to the Act of 1806; 2. That in the form of the discharge of the soldier, the Commanding Officer be required to insert his recommendation of the soldier so discharged to a pension, if he thinks him deserving of such recommendation; 3. That the Com-

[1] See with reference thereto 8 H. D. (O. S.), p. 489; Lord Palmerston, 41 ib., p. 1406; 32 ib., p. 1090; 33 ib., p. 97; 45 ib. (3rd Ser.), 1197; 73 ib. (3rd Ser.), 559, p. 10.

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missioners have the power of striking pensioners off the list for fraud or gross misconduct.

A.D. 1826. Repealed, and Acts consolidated.

In 1826 the Act was repealed, and the expediency of its repeal is placed beyond question by Lord Hardinge's evidence:[1]—"As a Chelsea Commissioner I examined several men who came before the Board, discharged for vicious and infamous crimes, who had, under Mr. Wyndham's Act, a legal right, on discharge, to a pension. These men, for their vices, were prematurely discharged; their comrades, who were good men, were compelled to remain in their corps; and the bad had the advantage of being early pensioned for life. I put a stop to that practice; but each case requires to be viewed with the utmost care; for, if you give the commanding officer power of getting rid of bad men, because they are bad, you will offer a premium for misconduct, and would make a great number of men bad for the purpose of gaining their discharges."

By the 7 Geo. IV., c. 16, the several Acts relating to Chelsea and Kilmainham were consolidated; but the Act preserved the existing rights of the soldiers by declaring that every soldier is to be entitled to receive such pension, allowance, or relief as was fixed by the regulations in force at the time of his enlistment.

Pensioners always liable to serve the Crown.

The pensioners have always been liable to serve the Crown in defence of the realm (by being formed into invalid companies), or in preservation of the public peace, but this obligation was not regulated by statute until recent years. The principal Pension Warrants in recent years are:—In 1806, October 7th (Mr. Windham, Secretary at War); 1812, June 30th; 1818, February 16th; 1822, March 26th; 1823, August 19th; 1826, November 1st (Lord Palmerston being Secretary at War); 1829, November 14th and 25th (Sir Henry Hardinge, Secretary at War); 1833, February 7th (Sir J. C. Hobhouse, Secretary at War); 1847, March, 24th; 1848, July 1st (Mr. Fox Maule being Secretary at War); 1864, July 23rd (Lord de Grey being Secretary of State for the War Department).

No pension or allowance is granted to the widows, children, and near relatives of soldiers, and the only statutory provision in their favour is 26 and 27 Vic., c. 57, sec. 18, which creates a compassionate fund out of unclaimed estates.

As to *half-pay* to reduced, wounded, or infirm officers, there is

[1] See Lord Hardinge's Evidence, p. 305, on military punishments, 1826.

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no doubt that half-pay in its *original* institution was simply a retainer for *future* services. Instances in the reigns of Charles I. and II. have already been given, and the same principle is shown more clearly in a Warrant of William III.,[1] reducing or reforming Colonel Holt's regiment, to five companies of 100 private soldiers in each. It reduces the regiment and proceeds thus:—"And We, being graciously pleased to allow half-pay to such of the commissioned officers as are hereby reformed, during such time as they shall continue with and actually serve in the said regiment, and having also given orders that the said reformed officers, so replaced in the regiment upon the first vacancies, according to their respective quality and seniorities in the list hereunto annexed, exclusive of all others, until they shall be first provided for; Our Will and Pleasure is, and We do hereby accordingly direct, that, upon the death or removal of any of the standing officers of the said regiment, you admit of none others upon the muster-rolls in their places until all the said officers, or such of them as shall actually attend their duty in the said regiment, be first provided for within the same; and for so doing this shall be your Warrant."

William III.'s reign, half-pay a retaining fee.

Appended to the Warrants are lists of the "*standing* officers of the five companies established from 1st May, 1695," and of the "*reformed* officers who are to receive half-pay during their actual service and attendance in the regiment, and to be replaced upon the first vacancy in their respective qualities, and according to their seniorities." When the regiment was disbanded in 1698,[2] the officers and men were incorporated (so far as vacancies in it would allow) with Colonel Collingwood's regiment, the other officers had half-pay, and were provided for as the Warrant of 1695 directed, and the other men (not wanted in Colonel Collingwood's regiment, "of whom you are to take an exact list as supernumeraries to Colonel Collingwood's regiment") were to receive their usual subsistence as such till there be room for them within the establishment.

A.D. 1695-98, half-pay Warrants.

When the Army was disbanded,[3] after the peace of Ryswick, it was referred to a Committee of the Commons[4] to consider "of a gratuity to be given to such officers and soldiers of the English Army who are or shall be disbanded;" and on the 18th January, 1697–8, the Committee reported[5] in favour of gratuities to be given to the soldiers and *non*-commissioned officers.

A.D. 1697. Disbandment of the army.

The House resolved,[6] "That provision be made for giving half-

[1] 26 April, 1695; Mis. Bk. 517, p. 100. [2] Mis. Bk., 517, p. 99.
[3] Feb. 1697. [4] 12 Com. Journ., p. 8. [5] Ib., p. 51. [6] Ib., p. 626.



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pay to the commissioned officers (native-born subjects) disbanded, and to be disbanded, till the said officers shall be fully paid off and cleared, *and* (which, by resolution of 31st November, 1699, was altered to 'or') be otherwise disposed of," and ordered "that a list be laid before this House of the names of the commissioned officers who are to have half-pay in pursuance of the said Resolution." This list, or establishment of half-pay officers, was formed by the King, and the War Office Records[1] show that every person whose name or other circumstances would lead to the belief that he was a foreigner was put to the proof of his being native-born, or naturalised, before he was included in the list.

The Royal Warrant of 23rd February, 1697–8, placing the officers on half-pay, follows in its preamble the words of the Resolution, and directs the Paymaster-General, "out of such monies as are or shall come to your hands for the use of Our forces, to pay to the several officers of Our said regiments the respective allowances mentioned in the list and establishment hereunto annexed, being the half-pay of themselves *and servants* respectively, to commence from the 1st day of January last, and to be paid unto them by weekly or monthly payments, in like manner as Our Army is subsisted; and upon monthly certificates from Our Commissary-General (or Deputy Commissary-General) of the musters of their being alive and qualified as aforementioned. And for so doing, this, with the acquittances of the said officers, or of their assigns, shall be from time to time your sufficient warrant or discharge."

A.D. 1699. On the 11th day of March, 1699, the King's Warrant and the half-pay establishment were laid upon the table of the House, and the Commons[2] at once assumed the guardianship of the public purse, even to the exclusion of the royal authority.

Commons the guardians of of the half-pay list.

Half-pay was only sanctioned "until the officers were otherwise disposed of," and as this disposition (civil or military employ) could only be given by the King, the House moved him by address[3] (27th April, 1699) "to prefer the disbanded officers entitled to half-pay as vacancies shall happen," and ordered returns (from time to time) to be laid before them "of all half-pay officers who had been otherwise provided for," and "of all vacancies that had happened in the Army since the half-pay was established, showing how these vacancies had been supplied."[4]

In the same spirit the Commons, on the 6th March, 1699, laid down certain rules[5] or qualifications applicable to the recipients.

[1] Bk. 517, p. 106. [2] 12 Com. Journ., p. 563. [3] Ib., p. 670.
[4] 13 Com. Journ., p. 271. [5] See ib., pp. 103–273, and 284.

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1. That no person having any employment, civil or military, shall be entitled to half-pay.

2. That no person who had either sold his commission or been broke for any misdèmeanour, shall be entitled to half-pay.

They added[1] some names to the half-pay list (the qualification in the instance of Captain Conn being loss of sight, and of Captain Laycock being wounds contracted in service); and on the 19th March, 1699, they resolved, "That no more persons be admitted into the list of half-pay but such as are already thereupon, *or* particularly directed by *this* House to be inserted therein, and such as are within the qualifications voted by this House."

In a later session the half-pay establishment was presented, and a Committee[2] appointed (17th April) to inspect the papers before the House relating to half-pay, which Committee, "having examined the commissioned officers of the several regiments," found and reported the precise sum due on the establishment.

The proceedings[3] upon a "Bill to naturalise Richard Legg *and others*," furnishes proof of the jealousy of the Commons in permitting half-pay to become a continuous charge. The Lords added several persons to the Bill, thus made eligible for half-pay; but the Commons objected "because there are so many English officers and soldiers out of employment since the late reducing and disbanding the Army, and by your Lordships' amendment so great a number of foreigners will be put into an equal capacity with Englishmen of being employed in His Majesty's Service, which they think was not your Lordships' intention."

Upon the reduction of the Army after the Peace of Utrecht, the Commons resolved[4] "That a supply be granted to Her Majesty for allowing half-pay for *one* year to the several officers who have served well by sea or land in the last war, and shall not be employed in time of peace," and then moved for and obtained Her Majesty's directions relating to the establishment for the half-pay to the disbanded officers. Disbandment in April, 1713.

These rules and regulations as presented[5] to the House were prefaced with this declaration:—"Whereas, upon the disbanding several of Our forces, We have thought fit that half-pay shall be allowed to the commission officers, who shall by that means be discharged Our service, until they shall be again provided for therein; which it is Our Royal intention they shall be in the first

[1] 12 Com. Journ., p. 640; ib., pp. 650-2; 13 Com. Journ., p. 288; ib. p. 228.
[2] 1701, March 31. 13 Com. Journ., p. 500; ib., p. 608.
[3] 12 Com. Journ, p. 671.
[4] 17 Com. Journ., pp. 303-5.
[5] Ib., p. 307; also Mis. Bk. 522, p. 12.



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vacancies that may happen amongst Our forces that shall be kept on foot, in preference to all other persons." The rules then follow, and there is a note appended that half-pay will be issued to such only as were strictly her *natural-born* subjects.

George I., acting through the Duke of Marlborough, as Captain-General, gave directions[1] to the Secretary at War to reduce the half-pay list, in these terms—

A.D. 1715.

George I. reduces the half-pay list.

"His Majesty being determined to provide as soon as possible for the broken officers and those who are upon half-pay, as well with intent to ease the nation in time of the burden thereof, as to reward the particular meritt of those officers who have distinguished themselves by their service during the course of the late warr:

"I am commanded to signifie to you His Pleasure that as any commission shall happen hereafter to become vacant in the Army, of what degree soever it be, the same shall allways be filled up with a half-pay officer, And that for the future no person through favour, interest, or other practices, may unjustly obtain a commission to which he has no right in prejudice of another officer elder than himself. It is His Majesty's further Pleasure that the first regard shall always be had to the seniority of the commission, provided His Majesty shall have good reason to be satisfyed of the character and merit of the person, and of his zeal and fidelity for His service, still observing that a reduced officer of the same rank in the regiment where such vacancy happens is to be preferred before all others. This His Majesty's Pleasure you are to cause to be entered in the books of your office as a standing rule and direction in this behalf."

When the Pretender sought to disturb the sovereignty of George I., the Commons[2] (26th July, 1715) addressed the King "to allow full-pay to such half-pay officers that were not otherwise provided for, and that His Majesty would give orders to the said officers to hold themselves in readiness to be employed in such manner as His Majesty shall think fit, and to assure His Majesty that this House will supply such extraordinary expence as His Majesty shall be at on this occasion out of the next orders voted. Thereupon all half-pay officers were warned by a notification in the 'London Gazette,'[3] "to hold themselves in readiness for immediate service," and on 26th September ordered to proceed to the various stations mentioned in the 'London Gazette.' Instructions at the

[1] Order of 30th June, 1715, Mis. Bk., 225. [2] 18 Com. Journ., p. 238.

[3] See 1st August, 1715, p. 38; Mis. Bk., 522, p. 55; and Earl of Bath's statement of these orders, &c., 14 Parl. Hist., p. 475.

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same time, were issued to the "Commanding Officers of the half-pay Officers" at these stations to employ them,—1. In aiding and assisting the Civil Magistrates in case of tumult; 2. In exercising and training the Militia, under the directions of the Lord-Lieutenant of each county.

These orders were not universally obeyed: on the contrary, some half-pay officers joined the army of the Pretender, and were taken prisoners at Preston. On the suppression of the rebellion, an inquiry[1] was instituted, by order of 16th November, 1716, "into the merits and pretensions of all persons claiming to be on the half-pay list;" but before it was entered upon the half-pay establishment became the subject of debate[2] in the Commons, and a reduced sum of 94,000*l.* was voted (the opposition being led by Sir Robert Walpole) upon certain rules which were for the first time enacted in the Appropriation Act (4 Geo. I., c. 3, sec. 18):—

Official inquiry and debate on half-pay list, November, 1717, and 22 January, 1718.

"That no person shall have or receive any part of the same who was a minor under the age of sixteen years at the time when the regiment, troop, or company in which he served was reduced.

"2. That no person shall have or receive any part of the same, except such persons who did actual service in some regiment, troop, or company.

"3. That no person having any other place or employment of profit, civil or military, under His Majesty, shall have or receive any part of the said half-pay.

"4. That no chaplain of any garrison or regiment, who has any ecclesiastical benefice or other preferment in Great Britain or Ireland, shall have or receive any part of the said half-pay.

"5. That no person shall have or receive any part of the same who hath resigned his commission, and has had no commission since.

"6. That no part of the same shall be allowed to any person by virtue of any Warrant or Appointment, except to such persons who would have been otherwise entitled to the same as reduced officers.

"7. And that no part of the same shall be allowed to any of the officers of the five regiments of Dragoons and eight regiments of Foot lately disbanded in Ireland, except to such as were taken off the Establishment of half-pay in Great Britain."

By Royal Warrant of the 15th April, 1718, the rules[3] were

[1] 14 Parl. Hist., p. 59. [2] 18 Com. Journ., p. 690-2; 7 Parl. Hist., pp. 506, 534.
[3] Mis. Bk. 523, p. 133.

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referred to a Board of General Officers, with instructions to reform the half-pay establishment, pursuant thereto, and a public notification was issued that all officers who did not attend at the Horse Guards by the 30th May, 1718, to prove their qualifications, would be struck off the list.

History of half-pay from 1718 to be traced with pensions to officers.

The history of half-pay may be traced from this period with that of pensions to officers; but, before doing this, an explanation of *unattached* and *retired* pay, as bearing a closer analogy to *half-pay* than to pension, must be given.

Unattached Pay, 1814.

*Unattached pay* originated in the year 1814, and rendered an increase to the half-pay vote necessary. Up to that date[1] all right to pay went by *regimental* commission, and a General officer unemployed, and not in command of a regiment, had no special rate of pay. When a regimental officer was raised to the rank of General, his attendance with the regiment was dispensed with, and a supernumerary officer appointed. This did not deprive him of his commission; he still received his pay, and his half-pay if the regiment was reduced.

It appeared, from a return of General officers laid before Parliament, that twenty-nine received the half-pay of Major, and sixty-six the half-pay of Captain; it was proposed to give them a special rate of pay, placing them on the same footing as flag officers of the Navy, and to abolish supernumeraries in the Regiments.

The proposal was carried out, first, by a Warrant of the 8th August, 1814,[2] which created a special rate of pay for the three grades of General officers (not being Colonels of regiments), instead of the half-pay or full-pay of their regimental commissions; and secondly, by Circular of 12th August,[3] stating that unattached pay might be received with staff or garrison pay.

The Finance Committee of 1817 complained[4] of the expense; by a Royal Warrant of the 18th February, 1818, a fixed establishment of 120 officers was settled. Certain General officers were thus unprovided for, and therefore the Committee on Army and Navy Appointments (1833), recommended[5] that 400*l.* a-year should be granted for such of the "General officers as did not receive, but

[1] 28 H. D., pp. 254, 664.
[2] Another Warrant of the same date was issued for the increase of half-pay.
[3] Vol. ii. of W. O. Warrants, 1 Aug., 1815, p. 53.
[4] Vol. iv. Parl. Papers, p. 48.
[5] P. xi.

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were otherwise eligible for, unattached pay," and the Royal Warrant of 28th May, 1835, carried out this recommendation.[1]

*Retired full pay* appears to have originated in the holder having a letter of service for raising veteran or invalid corps (principally by a call of Chelsea pensioners), which letter entitled him to full-pay on disbandment. In the year 1822 the privilege was abolished. Retired Pay.

These officers were usually disqualified, by wounds or infirmities contracted on duty, for more active service. Others were placed on the Retired List from actual incapacity for *any* military duty. The condition attached to retired full-pay was that the officer could not advance to higher rank in the service, but he was exempted from all recall to duty, except in veteran battalions.[2]

A Committee of the Government investigated the subject, and a Royal Warrant of 22nd July, 1830, fixing an establishment of officers for retired full-pay, and limiting the amount to 40,000*l.* per annum, was issued upon their recommendation.

The Warrant secured to worn-out and disabled officers that provision for full-pay which the establishment of veteran battalions formerly afforded, and declared that officers thereafter appointed to veteran battalions should not on retirement acquire any right to full-pay.

The Commissioners of Naval and Military Enquiry (1840) recommended that this establishment should be altered, and the Warrant of 1st October, 1840, gave effect to their recommendation.

The subsequent Warrants having reference to half-pay, unattached pay, and retired pay, are—1844, May 6th; 1848, July 1st; 1854, October 6th (founded on the Report of the Second Promotion Commission); 1858, October 14 (334); 1860, November 5th; 1861, March 28th; 1863, March 9th (809).

*Pensions for Officers.*—Up to 1718 the country made no general provision for wounded or disabled officers. Whenever any special claim arose, it was met by a pension granted by the Crown out of the Civil List. The account of these pensions granted by Queen Anne[3] shows the extent to which such claims were recognised by her. Some better provision was needed, and the Secretary of War (Mr. Craggs), in the debate on the half- A.D. 1718. Pensions for Officers.

[1] Report on Naval and Military Promotion, 1840, p. 295.

[2] Finance Report, 1817, p. 50, and 23 Geo. III., c. 50, sec. 31; Naval and Military Promotion and Retirement, 1840, p. 39.

[3] 18 Com. Journ., p. 102.

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pay list, urged that it was only reasonable to acknowledge the *past* services of officers. Therefore, to meet these cases, the Warrant of 15th April, 1718, with which the history of half-pay was closed, directed the General Officers to ascertain what claims of this kind were then existent, in these terms:—"And whereas in the course of this examination it may so fall out that sundry persons who have heretofore received the allowance of *half-pay* may be found *not* to be exactly within the descriptions before laid down, by which they would be entitled to the half-pay, notwithstanding they have served well during the late war, and have, through loss of limbs, wounds, sickness, and other casualties attending a military life, been obliged to quit the service;" and it gave a direction that a list of such cases should be laid before His Majesty for his consideration.

The list of these disabled officers has not been traced amongst the War Office Records, but that their claims were brought to the notice of the King may be inferred from the proceedings in Parliament.

A.D. 1719. Surplus of half-pay appropriated to pensions.

On the 2nd April, 1719, the Commons ordered,[1] "That it be an instruction to the said Committee, that they have power to receive a clause to enable His Majesty to dispose of so much of the sum of 94,000*l.*, given for half-pay for the year 1718, as shall be more than sufficient to pay the half-pay officers, to such officers as have been maimed in the service, or, by their long services, may be proper objects of His Majesty's compassion," and then resolved "that an humble address be presented to His Majesty, that he will be graciously pleased to direct the proper officers to lay before this House an account of what monies have been issued out of the Exchequer to the respective Paymasters, on account of half-pay; and what remains in the said Paymasters' hands."

The Appropriation Act[2] carried out this resolution by enacting "That so much of the 94,000*l.* voted in the previous year as should be more than sufficient to satisfy the said reduced officers according to the prescribed rules, or any part of such overplus, should and might be disposed of to such officers who were maimed or lost their limbs in the late wars, or to such others as, by reason of their long service or otherwise, His Majesty should judge to be proper objects of charity, or to the widows or children of such officers according to such Warrant under His Majesty's Royal Sign Manual as should be signified in that behalf."

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[1] 19 Com. Journ., p. 145.

[2] Secc. 47 of 5 Geo. I., c. 19; and see also sec. 49 of 6 Geo. I., c. 11.

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This was the only provision made by Parliament for pensions to officers or their relations, until, in 1782, Mr. Burke's Act[1] created an additional provision: first, by office fees, after paying thereout fair salaries to the clerks; secondly, by savings on the allowance for clothing of invalid or independent companies. A.D. 1782. Fund increased.

The funds arising from these sources were to be paid to the Treasurer of Chelsea Hospital, "towards a fund for an augmentation to the half-pay of officers who have been or shall be maimed or grievously wounded in His Majesty's land service, or as an augmentation to the pensions of widows, or as pensions to the children of such officers as have been killed in the said land service, as His Majesty shall direct and appoint," with this proviso, "that no addition to half-pay in consequence of maims or wounds, or pensions to widows whose husbands have or shall have been killed in His Majesty's service, shall exceed 25*l.* a-year, nor shall the allowance to a single child of an officer killed exceed 20*l.* a-year, nor be continued longer (if a male) than to twenty-five years of age, or until he be provided for in His Majesty's service; or if more children are left, the share of each child shall not exceed 12*l.* a-year, to be continued to the males as aforesaid, and no otherwise."

This Clause in the Appropriation Act, and Mr. Burke's Act, were the only statutory provisions in favour of wounded officers or their relations, until the year 1811, when the 51 Geo. I., c. 103, was passed.[2] The preamble of this Act, that "It was expedient and necessary, that better provision should be made for the retirement of officers disabled by wounds, or rendered incapable of service by age, ill-health, or infirmity, and also for enabling officers removed from the Permanent Staff of the Quartermaster-General, to receive half-pay," and the enactment enabled His Majesty to grant to any officer, who would be entitled to *half-pay* on reduction, *half-pay* on retirement when unfit for service,[3] either from wounds, ill-health, infirmity, or age. In the next Session the provisions of the Act were, by 52 Geo. III., c. 151, extended to foreign officers formerly in the British service. A.D. 1811. Half-pay a compensation for wounds, &c.

It must be admitted that, from the date of the 51 Geo. III.,[4] half-

[1] 22 Geo. III., c. 81, secs. 11 and 13.

[2] As to the necessity for this Act, see Lord F. Somerset's Evidence, p. 164, of 1833; and 21 H. D. (O. S.), p. 895.

[3] The War Office Records show frequent instances of placing surgeons on half-pay, "when from age or infirmity they had become unable to discharge their duty." See Half-pay Books, 1763, pp. 409, 468.

[4] See 7 Geo. IV., c. 31.

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pay, in some instances, loses its original characteristic of a *retaining* fee for *future* service, and assumes that of a pension for *past* meritorious service rendered to the Crown.[1]

Half-pay a reward.

*Pensions to Officers for wounds* were first made the subject of separate estimate in the year 1812. In the year 1798[2] rules had been laid down entitling an officer to "one year's pay" for an eye or limb lost in action, and to be cured at the King's charge, and it is said that the same allowances can be traced back to the reign of James II.[3] It was thought just, as naval officers received *pensions* for such losses, to give to officers of the army the same allowances, and a Royal Warrant of 20th June, 1812,[4] was issued, with a scale of pension according to the rank of the wounded officer and the nature of the injury.

A.D. 1812.

Pensions for wounds.

This provision had a retrospective operation,[5] to include, first, all those officers who had been wounded since the commencement of the war in 1793, and subsequently all officers wounded at an earlier date.

A Royal Warrant (31st July, 1815[6]) relating to these pensions was issued after the battle of Waterloo, entailing considerable expense on the public. It came under the notice of the Finance Committee of 1817,[7] which recommended that precautions should be taken to guard against "perpetuating claims upon public benevolence, where the motives for making such grants cease to exist," and probably in consequence of this recommendation the Circular of the 30th June, 1817, was issued.

Finance Committee of 1817.

The Finance Committee of 1828 directed the attention of the Commons to the same item of expenditure, and recommended[8] that officers in receipt of these pensions should be occasionally *re*-examined by the Medical Department, to ascertain whether their condition continued such as to justify the receipt of the pension; and further that pensions of this description should only continue to be paid in cases which came within the original intention for which they were instituted; and in consequence of these recommendations the Warrant of the 14th November, 1829, was issued by Sir Henry Hardinge.

Finance Committee of 1828.

*Pensions to Officers for distinguished service* originated in the

[1] See Instructions for Retiring Officers under this Act, 28 Feb., 1812, Vol. 2 of Coll. Warrants, p. 26.
[2] Coll. 1807, p. 489.
[3] Mis. Rules, 1685, p. 63.
[4] Vol. 2 of Coll. Warrants, p. 34.
[5] 21 H. D. (O. S.), p. 896.
[6] Vol. 2 of Coll. Warrants, p. 69.
[7] P. 62.
[8] P. 9.

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recommendations contained in the report of the Select Committee of the House of Commons in 1833. Prior to that date the rewards for distinguished services consisted of non-effective Garrison appointments, which the Committee recommended should be abolished, and that, in lieu thereof, the Crown should be empowered to grant "rewards for distinguished services in the army," not exceeding a total sum of 18,000*l.* in annual pensions.[1]

A.D. 1833. Pensions for distinguished service.

*Pensions to the Widows of Officers* appear to have originated in the reign of Queen Anne, by Warrants, dated respectively[2] the 6th January, 1707, and 23rd August, 1708,[3] and until the year 1783[4] the fund was raised by charging in the accounts of the regiment the pay of two men per company or troop, which was given over into the hands of the Paymaster of Widows' Pensions, an office abolished (by the discontinuance of the poundage, by order of the House of Commons) shortly after the death of the Treasurer, General Fox, in 1811.

A.D. 1708-1828. Pensions to officers' widows.

Under the Warrant of 1708,[5] "all widows laying claim to pension were to be required to show that they had no pension allowance or other provision from the Crown, *or any sufficient or reasonable maintenance left them by their late husbands*," and under the Rules of Geo. I. (26th April, 1717[6]), for the payment "of Our Royal Bounty to the widows of Officers killed or dying in Our service," a scale of pensions was fixed according to the actual (not brevet) rank of the husbands, and the Paymaster was to require an affidavit that the applicant was a widow, and had no other provision or allowance from the Crown. On death or re-marriage the pension was to cease and determine.

In the year 1730, a sum of 1500*l.* appears to have been voted for pensions to widows of reduced officers, and the Appropriation Act (3 Geo. II., c. 16, sec. 15), provided that it should be paid "on account of one year's pension from 25 Dec. 1729, to be allowed to the widows of such half-pay officers of the land forces as served, and were married, before the 25th December, 1716, to be paid over to such widows according to such establishment, and with and

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[1] P. iv. [2] Pay Bk., pp. 46, 58.

[3] There was an irregular provision made for the widows and children of officers: (1) by the sale of commissions, and handing over the proceeds to them; (2) by appointing infants to commissions in the army with leave of absence, and handing over the pay for the maintenance of the officer's family. These expedients have long since been abandoned. See 'Naval and Military Inquiry, 1840,' p. xxxiii.

[4] 23 Geo. III., c. 50. [5] 38 H. D. (O. S.), p. 86. [6] Mis. Bk. 521, p. 1.

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subject to such conditions as His Majesty, by Royal Sign Manual Warrant should be pleased to direct or appoint."

In the following year the Secretary at War laid before the Commons[1] a list of the widows of reduced officers of His Majesty's land forces *and marines* who died upon the establishment of half-pay in Great Britain, and who were married to them before the 25th December, 1716, with an estimate of the charge thereof for the year 1731, amounting to 2662*l.*[2]

The Orders of Geo II., of 26th July, 1737,[3] contain regulations for the payment of these pensions (the same in amount) to the widows of full and half-pay officers. Thus the widow of an officer killed or dying in service had to prove her widowhood by the certificate of the Colonel of her late husband's regiment, "as to time, place, and manner of his death, and to state her condition and circumstances, in order that His Majesty might signify his directions on her claim."

And the widow of a *reduced* officer had to prove the several facts (by the certificate of two credible persons) of her widowhood; that her husband served as an officer of the land forces before 25th December, 1716, and that she was married to him before that date; the rank in which her husband died on the half-pay establishment, and the date of his death; and, lastly, that she ever since had continued his widow, and had no other provision from Government.[4] A widow forfeited her pension on death or re-marriage.

The funds arising under these Warrants were found to be far greater than the claims created against them. In 1780 the savings of the five preceding years, 113,998*l.*, were applied by Parliament in aid of *extraordinaries* incurred, and in other years the excess balances (annually arising) were dealt with in an irregular manner. The Commissioners for Inquiry into the Public Accounts of the United Kingdom therefore recommended[5] the substitution "of an annual specific fund upon estimate for these services, in place of the compound funds in use;" and Mr. Burke's Act directed the Secretary at War to prepare and submit to Parliament "an estimate of the charge of the pensions to be paid to the widows of commissioned officers, which was done, and by the appropriation of 1784[6]

[1] 21 Com. Journ., p. 657; 4 Geo. II., c. 9, sec. 46.

[2] In the year 1732 a sum of 2962*l.* was voted for the same objects. See 21 Com. Journ., p. 57, and 5 Geo. II., c. 17, sec. 13.

[3] See vol. ii. of Reports of the House of Commons, pp. 77, 168.

[4] See the Warrant of Geo. III. (27 April, 1770), in similar terms; vol. ii. of Reports on Public Accounts, p. 273.

[5] Vol. ii. p. 76.

[6] Geo. III. (sess. 2), c. 44.

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the sum of 17,000*l.* 4*s.* appropriated for widows of commissioned officers.

From the preamble to the Warrant of 25th June, 1806,[1] it would be inferred that the widows of officers dying on half-pay were not *then* entitled to pension, for the Warrant purports to confer a pension on them "in case their husbands have died or shall die after 25th June, 1806, and were placed on half-pay subsequently to their marriages with the said widows, in consequence of the reduction of the corps, or of being incapable of further service." Each application was to express "the situation and circumstances of the widow," and the period when the officer and widow were married.

In 1818 an attempt was made to confine the "pensions to those applicants who shall appear from the state of their pecuniary circumstances to be proper objects of Royal Bounty,"[2] and a Warrant issued on the 17th February, directing that no pension should be granted to any widow of any officer dying subsequently to the 25th December last, "who should have any other pension from Government, *or whose annual income otherwise arising should amount to double the rate of pension authorised to the rank of her deceased husband.*"

Another Warrant was shortly afterwards issued, substituting an income of quadruple instead of double the rate. An address was moved in the Commons (28th April, 1818[3]), that the original Warrant (February) might be recalled, and the result of the motion was not only the recal of the Warrant,[4] but the revocation (for a time at least) of the rule entailing forfeiture on re-marriage; 634 widows (who had re-married) were thus brought again on the pension list, at the annual cost of 29,436*l.*

On the same occasion the indulgence of pensions was extended to the widows of officers marrying *on retirement*, and never subsequently serving on full-pay, provided that the officer had previously to marriage served three years on full-pay. This brought 223 widows on to the pension list, at the average cost of 9535*l.*[5]

The Finance Committee of 1828 recommended a return to the ancient regulations as just and salutary; and, in accordance with their Report, a Royal Warrant was issued on the 7th July, 1830,[6] amending the regulations under which pensions were to be granted.

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[1] Code of Regulations, 1807, p. 580.
[2] 37 H. D. (O. S.), p. 758; 38 ib. p. 383.
[3] 38 ib., pp. 324, 375, 395.
[4] Warrant, 18th June, 1818, vol. vi. (p. 190), MS. Army Regulations.
[5] See MS. note on Army Estimates, p. 376.
[6] See Debates on this Warrant, 10 H. D. (3), p. 497.

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A.D. 1720-1827.

Pensions to Officers' Children.

*Pensions to the Children and Relatives of Officers* have been provided for out of the Compassionate Fund. The claims of officers' children were first incidentally recognised by Parliament in the Appropriation Act of 1720,[1] which contained a clause (continued in subsequent Acts) authorising the Crown, out of any overplus on the half-pay vote, by Warrant under Royal Sign Manual, to grant allowances to the widows *or children* of such officers who were maimed, or lost their limbs, &c.

The first compassionate list found in the War Office[2] is dated in 1773; the number of persons on it 328, the total charge 3,635*l.*, and the average about 11*l.* to each person.

The prefatory Warrant to the list states that these grants were made "in consideration of *their or their near relations'* long and faithful services in Our army, or their being found proper objects of charity of Our Royal Bounty;" from which it is to be inferred that *officers* themselves, as well as their relations, were eligible to the benefits of the Compassionate Fund.

In 1807 the first estimate was laid on the table of the House of Commons,[3] and 12,000*l.* voted for "defraying the charge of allowances on the Compassionate List to children of deceased officers of the land forces, and to certain widows of officers of the said forces not entitled to the pension."

Until the year 1823[4] none but office rules relating to these grants were in existence; the rates of these allowances were left wholly to the discretion of the Secretary at War, and granted according to his opinion of their claims. In that year, however (at the recommendation of a committee of members of the Government, held at Fife House in the previous year), a graduated scale of allowance was fixed, and the highest amount which any one family might, under any circumstances, be allowed to receive was defined.

"Females who till then had been pensioners for life whilst they continued single were directed, if placed on the list subsequently to Christmas, 1823, to be struck off on attaining the age of 21, or upon marriage at an earlier period.

"Males, agreeably to former practice, were to be struck off at the age of 18 (exceptions being allowed to be made in regard to both males and females in cases of extreme bodily or mental infirmity.)

"Eligibility was also restricted to the cases of orphans whose

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[1] Geo. I., c. 19, sec. 47. [2] 'Army Estimate Explanations,' vol. ii. p. 383.
[3] 47 Geo. III., sess. 2, c. 76, sec. 12. [4] 'Army Estimate Explanations,' vol. ii.

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mothers, under the Pension Regulations, would be entitled, if living, to pensions as widows of officers."

On the 13th June, 1826,[1] two sets of regulations were issued under Royal Sign Manual: the one for "establishing certain rules by which the grants of annual allowances, as of the Royal Bounty to the widows, and in certain special cases to the mothers or sisters, of officers of the land forces who have lost their lives in the service shall be governed;" the other for "establishing certain rules and regulations by which the grants of allowances on the Compassionate List, to the legitimate children of deceased officers of the land forces, shall be governed."

In 1827[2] the annual vote had increased to 38,000*l.*; and the Finance Committee of 1828 recommended that it should in no case be permitted to exceed 40,000*l.* The Warrant of 7th July, 1830, rendered it necessary that children claiming to be placed on the List should show that they had no other allowance, and that their pecuniary circumstances, and those of their family, were so limited that they actually required assistance from the fund.

*Pensions to the other Relatives of deceased Officers* originated in Bounty Warrants, under Royal Sign Manual, which, it is said, can be traced back for many years. The number of recipients on the establishment, and the annual expenditure appears to have been:— A.D. 1809-34. Pensions to other Relatives of Officers.

| | | | £ | s. | d. |
|---|---|---|---|---|---|
| In 1793 | .. .. | 18 .. .. | 2100 | 0 | 0 |
| 1803 | .. .. | 35 .. .. | 3650 | 0 | 0 |
| 1808 | .. .. | 41 .. .. | 4466 | 11 | 8 |

Up to 1809 these bounties were paid out of the "Army Extraordinaries," but in that and subsequent years they were provided for by separate estimate.

The Finance Committee of 1817 reported[3] upon these grants "as generally confined to the relatives of officers killed in action, or dying from the immediate effects of fatigue on service, and to the relatives of General officers who have no other adequate provision; leaving it of course still open for a departure from this rule in any individual instance of particular service, or extreme distress. The circumstances of each case are stated to the Secretary at War, by whom the same are particularly investigated, and then submitted for the Royal consideration."

[1] Regulations, 1825-6, pp. 133, 135.

[2] Third Report, p. 9; see 'Army and Ord. Expenditure, 1850,' p. 154. [3] P. 62.

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In consequence of this Report[1] the Treasury directed that "relief upon the list of Royal Bounty Warrants should only be granted, in future, to mothers and children[2] of officers killed in action, or dying of wounds, or from accidents in the service, and this rule continued in force until the Warrant of June, 1826, was issued.

The 500*l.* a year Fund.

By authority of the Treasury, conveyed in the letter of the 4th Sept., 1834, a sum not exceeding 500*l.* per annum, part of the Compassionate Allowance, is distributable, at the discretion of the Secretary at War, to objects who by a rigid adherence to the Royal Warrants would be excluded from any allowance, provided that no money be given to the same person more than once in three years (which the 22 Geo. III., c. 82, sec. 30, prohibits), as a bounty, and that the recipient has a good claim on the public on account of military services, rendered personally or by "immediate relatives."

The principal Warrants relating to officers' and widows' pensions and to the Compassionate Fund, since this date, are:—1844, May 4th; 1845, Nov. 8th; 1848, July 1st. War Office Regulations, 1855; Addenda to same; 1857, July 18th, War Office Circular 122.

Having thus given a brief outline of the origin and history of these several grants, it remains for me to collect and arrange information as to the general principles that hitherto, in respect of these grants, have been adopted by the Secretary at War in respect of his official duties (see Chap. XXII.).

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## ( H. )

*Chapter* VII., *par.* 67.

### On the Employment of Civil Servants in the Administration of the Army.

At the present time there is a disposition to fill the highest and the lowest appointments in the department of Secretary of State for War with Commissioned officers, and with persons who have served in the ranks as non-commissioned officers or soldiers, in the place of gentlemen entering as youths, after examination, into the Civil Ser-

[1] 'Army Estimate Explanations,' vol. ii., p. 380.

[2] *Children* inserted in the Treasury Minutes by mistake, *instead* of *Widows*.

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vice, to be specially trained and to devote themselves to the discharge of those duties.

This change is advocated upon one or other of these grounds:—either that Military Men have special qualifications for those duties which they *are to discharge*, or special merit in respect of the duties they *have discharged*. In the first case, that they are more competent, in the second, more deserving than civil servants; while some advocates for this change in the *personnel* see both these advantages combined in these new officials, and the further advantage of cheaper Administrative Agents.

Looking at the notice placed on the Order Book of the House of Commons[1] at the close of last session, and at the facts (1) that 14,000,000*l.* is annually spent upon the Army under the control of one parliamentary officer, the Secretary of State, into whose department these new officials are to be sent, and (2) that the other departments of the State employ civilians where, if the arguments are good, officers and soldiers ought preferably to be employed, no one can doubt that the subject *demands* consideration.

The Commissioners of 1783 and of 1806,[2] whose reports are quoted in the text, came to the conclusion which others investigating or cognisant of the truth would do; that soldiers, sailors, police, or any other mass of human beings whose wants are to be provided for by the State, give occasion for commercial and civil business identical in its kind, though far larger in degree, to that which is found in the ordinary affairs of civil life. The speciality of their wants, if such arises, is better provided for by persons trained to supply, than—as soldiers, sailors, &c.—to occasion them. The accounts of the Army—that is, of its pay and allowances—have, from the original institution of the Army, been matters of statute law and official regulation; but in general affairs—as in the Barrackmaster-General's confusion,[3]—the simple solution of financial difficulty is to be found in reducing the accounts to the model of merchants' accounts, known and practised all the world over by merchants.

For this variety of work an official training is needed, and a life may be laboriously spent in mastering the full details of Army administration, thrown as it now is upon *one* Responsible Minister whose duty it is to regulate and control Military Expenditure.

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[1] "Lord Elcho:—War Office and Horse Guards Select Committee, to enquire how far it may be expedient and practicable, with a view to the more economical administration of the War Department, and for the good of the army, to substitute military for civil clerks at the War Office and Horse Guards, liberal provision being made for full compensation to existing civil clerks. (For the next Session.)"

[2] Chap. VII., par. 66, and Chap. XII., pars. 40, 43. [3] Chap. XI., par. 35.



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Granting then that education and official experience in Commercial, Financial, and Administrative duties are needed—or why do not the Merchants of London secure Military assistants?—*is it* expedient to train men for many years in totally different pursuits —for totally different purposes,—aims,—and rewards,—and then —on their success or failure in this career—to place them, for emolument, in this new mode of life, and to learn in middle or old age the discharge of civil duties?

But, if other facts are accepted as the truth, the argument against this change in the employés of the War Office is not negative only; the *distinctive* feature of the War Office being that of a Civil Department, established as a check and control upon Military Authority and Army Expenditure.

"The Commander-in-Chief's office," said the Duke of Wellington, "is entirely disconnected with money. The Commander-in-Chief has no power of giving an allowance to anybody, or of incurring any expense whatever." He then goes on to justify this Constitutional arrangement:—"Considering who the persons are who are likely to be Commanders-in-Chief of the troops in this country, I do not think it would be an economical arrangement to put the power of incurring expense into their hands, instead of keeping that power in the hands of the Secretary at War, who must answer to Parliament for every expense incurred. It is much better the Secretary at War should be the person to regulate that matter than that it should be in the *hands of the officers connected with the Army.* The Secretary at War is a check on the Commander-in-Chief for the object of *economy.*"

If this be true, then, waiving other considerations, does it need an argument to shew that the persons to discharge these functions *for* the Secretary at War ought, from the very nature of the case, to be *absolutely independent*—both in previous training and in future means of subsistence—of the Commander-in-Chief.

Transfer the consideration of the question to another profession, and assume, for the illustration of it, that the incomes of the Clergy and all the expenses of public worship were to be drawn through the Treasury from—but subject also to the control of—the Laity. In that case it would be clear that, as the integrity of the Control was the *only* security held by the Laity against an increase of Independence, the Controlling Agents ought not either to be of—or influenced — or appointed — or dismissed by—the Clerical order. Indeed they should be both thoroughly independent and strictly impartial.

How far any of these *and of other* adverse conditions attach to officers employed by the Secretary for War, with the sanction of

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the Commander-in-Chief, to control Military expenditure, each person's knowledge must determine; but few would deny that there is an *apparent* anomaly in their position.

But, waiving these considerations, if the public should see fit to cut off other rewards for Distinguished service, or to appropriate the appointments in the War and other Civil departments to such a purpose, that—though not expedient (?)—would at any rate be a plain and intelligible policy. Unfortunately, as it is, the men of *distinguished service* are not *as a rule* those who are found in these civil employments. *They* look for the legitimate rewards of their own profession, and at civil employment in much the same spirit as that in which Colonel Fullarton's previous employment as a *clerk* was criticised by Mr. Fox[1] in 1780. Civil employment is sought for by men of a different stamp, and the plea for it is urged in the same spirit, but not with the same truth, that in 1659 induced the republican Soldier to complain to the Council of Safety that the *Great Seal* should be entrusted to a *lawyer*. "Most seemly were it that an office of such power and profit should be given to those who have encountered *the wars and adventured their lives* for the service of the Commonwealth." But, *as a rule*, even this qualification does not—as slight enquiry would prove—exist; rather it is that of a previous training to implicit obedience under the Mutiny Act.

No doubt, in France or Prussia the Army is the main support of the Throne, and hence all the avenues to public employment are thrown open to soldiers, as the favoured class in the State. Control in finance and of the military by the civil power, as established *here* at the Revolution of 1688, is *there* wholly unknown; and unless we desire to accept the political condition of these countries as the measure of our Constitutional rights, it may be imprudent too closely to follow in the lines of their Military Administration.

But apart from this objection,—and having regard to the classes from which our officers and men come into the Army and the pluck of the English people,—are good officers and soldiers likely to be attracted to the Army for the actual purposes of *war* by holding out *Civil* employment as their reward? And *is* our necessity such that the Civil Service of the country must be surrendered to the Military profession; for, when surrendered, what protection will remain to the Civil community?

Against the immediate change in the *personnel* of the Adjutant-General's and other military departments to increase efficiency, or to make a provision for officers and soldiers in such employments no Constitutional objection can be raised; but to change the Garrison

[1] 21 Parl. Hist., p. 334.



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of the War Office, an outwork of the Treasury, by placing Officers, commissioned or non-commissioned, in it, or civilians amenable to officers under the Commander-in-Chief, is to pervert the Department from its original function; to render it (in effect) subordinate to the Military element in the State.

It is difficult to believe,—in the face of experience, and of some evidence to the contrary,—that the efficiency of the War Office, or other Civil Departments of the State, can be *the* object in view; but, though it might be useless to argue against such pretensions, one illustration may probably silence, if not convince, the gainsayers to the employment of Civil servants.

A Memorandum from the Horse Guards, dated 14th March, 1828, from the late General Sir Henry Torrens, K.C.B.,[1] was laid before the Finance Committee of 1828, in which were described the *original* constitution of the Adjutant-General's department in 1792, and the subsequent change that had been made in the *personnel* to *increase* its *efficiency*. The words in italics are deserving of notice:—

"The establishment of the Adjutant-General's office has been *altogether changed* since the year 1792. At that period a specific sum was allowed to the Adjutant-General for the payment of his clerks, and of the contingent expenses of his office.

"This sum, increased at two different periods, upon the ground of actual increase of expenditure, was found to be inadequate to the purpose, and the method of conducting the details of the office was considered in many respects to be objectionable. *The clerks* (including the principal Clerk) were *generally officers or non-commissioned officers*, and received certain stipends from the office in addition to their regimental pay, and *frequent changes unavoidably* took place among the persons employed. By this measure an account of the 'real' expenses of the office was not shown; it also withdrew useful men from the service of their regiments, *and did not in fact furnish that description of person absolutely necessary for the business of the office*, extended as it has been of late years, particularly since the year 1802, and connected with Parliamentary inquiry, and with other matters of a confidential and important nature relating to the discipline and efficiency of the Army.

"The allowance above alluded to was therefore discontinued from the 25th December, 1798, and an account of the sums actually paid for the salaries of clerks and messengers, and other necessary expenses, has since that period been annually rendered to the Secretary at War accompanied by proper vouchers.

"In the year 1804, when the war with France was renewed with increased vigour, Mr. Pitt (then Prime Minister) had *frequent*

[1] 21 Parl. Hist., p. 187.

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occasions for *statements of different kinds relating to the Military Force* of the country, *and to the effects* of the measures adopted from time to time by the Government for increasing its numbers and efficiency. It was *then* directed (with the concurrence of his late Royal Highness the Commander-in-Chief) that the Adjutant-General's Office should be placed upon *an entire new establishment.* A principal Clerk, *being a civilian*, was appointed with a salary corresponding to the *important* duties he had to perform, and *young men duly qualified* were brought *into the office* on moderate stipends, and were placed under the immediate superintendence and direction of the principal Clerk.

"*The Clerks* since employed have no other allowances or emoluments from the public than their salaries, an account of which is given in the annual Estimates laid before Parliament. Their salaries have been increased in reference to the period of their services, according to a scale approved by the Lords Commissioners of the Treasury, on the 1st October, 1808, but which was curtailed by their Lordships on the 7th March, 1822.

"The regulated increase of salary was established with *a view of securing to the public a continuance of the services of those clerks who, by their attention and assiduity have rendered themselves useful.*" Of course, if the object be to render the Secretary of State's office contemptible in the estimation of the public, and the decisions of the Civil Minister of no weight or authority with the Army, then fill it with men placed there from the ranks of the Army.

Should these facts be ignored, and the policy on which a Civil as distinct from the Military Service has been established, be reversed?

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## ( I. )

*Chapter* VIII., *par.* 27.

### Duration of the several Mutiny Acts in the Reigns of William and Mary and of Queen Anne.

| | Stat. of Realm. Vol. | Page. |
|---|---|---|
| 1688.—1 William and Mary, c. 5.—12th April to 10th November, 1689[1] .. .. .. .. 28 days | VI. | 55 |
| Ib. (Session 2) c. 4.—1 year from 12th December, 1689 .. .. .. .. .. | VI. | 146 |

[1] 7 Parl. Hist., p. 179.

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| | Stat. of Realm. Vol. | Page. |
|---|---|---|
| 1690.—2 William and Mary (Session 2) c. 6.—8 days from 20th December, 1690 .. .. .. .. | VI. | 227 |
| 1692.—4 William and Mary, c. 13.[1]—2 months and 20 days from 10th March, 1692, to 1st March, 1693 .. .. .. | VI. | 393 |
| 1694.—5 & 6 William and Mary, c. 15.—Last Act extended to 1st March, 1694 .. .. .. | VI. | 479 |
| 1694.—6 & 7 William and Mary, c. 8.—2 last Acts extended to 10th April, 1696 .. .. .. | VI. | 586 |
| 1695-6—7 & 8 William III., c. 23.—3 last Acts extended to 10th April, 1697 .. .. .. .. | VII. | 107 |
| 1696-7.—8 & 9 William III., c. 13.—The last Acts extended to 10th April, 1698 .. .. .. | VII. | 204 |
| 1701.—13 & 14 William and Mary, c. 2[2] (England and Ireland).—2 years and 10 months from 20th February, 1701, to 25th March, 1703 .. .. .. .. | VII. | 733 |
| 1702.—1 Ann (Stat. 2) c. 20.—From 24th March, 1702, to 25th March, 1704 .. .. .. .. | VIII. | 209 |
| 1703.—2 & 3 Ann, c. 17.—From 24th March, 1703, to 25th March, 1705 .. .. .. .. | VIII. | 284 |
| 1704.—3 & 4 Ann, c. 5.—From 24th March, 1704, to 25th March, 1706 .. .. .. .. | VIII. | 339 |
| 1705.—4 & 5 Ann, c. 22.—Last Act continued to 26th March, 1707 .. .. .. .. .. | VIII. | 506 |
| 1706.—6 Ann, c. 18.—2 last Acts extended to 25th March, 1708 .. .. .. .. .. | VIII. | 590 |
| 1707.—6 Ann, c. 74.—3 last Acts extended to 25th March, 1709 .. .. .. .. .. | VIII. | 839 |
| 1708.—7 Ann, c. 2 (for recruiting the Army) .. .. | IX. | 41 |
| 1708.—7 Ann, c. 4.—From 24th March, 1708, to 25th March, 1710 .. .. .. .. .. | IX. | 51 |
| 1709.—8 Ann, c. 6.—Last Act continued to 25th March, 1711 .. .. .. .. .. .. | IX. | 197 |
| 1710.—9 Ann, c. 9.—2 last Acts continued to 25th March, 1712 .. .. .. .. .. | IX. | 389 |
| 1711.—10 Ann, c. 13.—From 24th March, 1711, to 25th March, 1712[3] .. .. .. .. .. | IX. | 568 |
| 1711.—10 Ann, c. 33.—Rectifying mistake in last Act, and making it extend to 25th March, 1713[4] .. | IX. | 702 |

[1] 14 Parl. Hist., pp. 434 and 451.
[2] Ib., p. 434.
[3] See 14 Parl. Hist., pp. 434, 451, and 15 Parl. Hist., pp. 250-290.
[4] Ib.

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| | Stat. of Realm Vol. | Page. |
|---|---|---|
| 1712.—12 Ann, c. 13.—From 25th July, 1713, to 25th March, 1714 .. .. .. .. .. | IX. | 782 |
| 1713.—13 Ann.—From 5th June, 1714, to 25th March, 1715 .. .. .. .. .. .. | IX. | 903 |

## ( J. )

*Chapter* VIII., *par.* 108.

### Note as to the Liability of the Militia and the Reserve Forces to the Mutiny Act.

I. *As to the Militia.*

By the 1st Mutiny Act it was enacted, "That this Act or anything therein contained shall not extend or be anyways construed to extend to or concerne any the Militia forces of this kingdom;" and these words—extended to the Yeomany and Volunteer forces—stand in the present Mutiny Act with this addition:[1] "Excepting only where by any Act for regulating any of the said forces the provisions contained in the Mutiny Act are, or shall be, specially made applicable to such forces." Militia, how far liable.

Turning to the Militia Acts, the following provisions are found there:— Militia Acts.

(1.) "During the period of training and exercise all the clauses, provisions, matters, and things contained in the Mutiny Act and Articles of War shall be in force with respect to such Militia in all cases whatsoever, but so that no punishment shall extend to life or limb."[2]

(2.) During the time that the Militia is "drawn out and embodied, until the same shall be returned again to its own county and disembodied by His Majesty's order, it shall be subject to all the provisions contained in the Mutiny Act and Articles of War, and all the provisions contained therein shall be in force with respect to the Militia while embodied, as aforesaid, in all cases whatsoever."[3]

(3.) During the time that any Militia volunteer is "attached for a time for the purpose of instruction to any Regiment of Her

[1] 1 William and Mary, c. 520. [2] 42 Geo. III., c. 90, sec. 89.
[3] 2 Geo. III., c. 90, sec. 111; Reg. *v.* Jessop; 1 Den. C. C., p. 619.

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Majesty's forces or Permanent Staff of Militia, he shall for such time be deemed to be under the operation of the Mutiny Act, and under the command of the officer commanding such Regiment or Permanent Staff of Militia."[1]

(4.) The Permanent Staff of the Militia "shall be at all times subject to the Mutiny Act and Articles of War," and it shall be lawful for the colonel of the regiment to direct the holding of Courts-martial for the trial of offenders for any offence against the said Act and Articles committed during the time such regiment shall not be embodied, and for the trial of any one who shall have deserted while the regiment was embodied, and shall not have been apprehended till after it shall have been disembodied, but so that no punishment should extend to life or limb.[2]

II. *As to the Yeomanry.*

(1.) That force from the time of the summons of the "Lord-Lieutenant to assemble and until the enemy shall be defeated, &c., (the same to be signified by Her Majesty's Proclamation) shall continue, and be subject to all provisions in the Mutiny Act and Articles of War in all cases whatever."[3]

(2.) So again when they are assembled (such assembling being under the 23rd section of the Act) "to do military duty, or for improving themselves in military exercise, or "for the suppression of riots," from the time of so assembling and during the period of their remaining on such military duty, or being engaged in such service as aforesaid, they shall be subject to all the provisions of the Mutiny Act and Articles of War.[4]

(3.) The permanent staff "shall at all times be subject to the Mutiny Act and Articles of War, and shall be liable to be tried for any crime committed against such Act and Articles" by any Court-martial, according to the nature and degree of the offence, in like manner and under the like regulations as the permanent staff of the Military forces, provided the Court-martial is composed of yeomanry officers, and that no punishment awarded extend to life and limb, except when such corps is "called out in case of invasion."[5]

III. *As to the Volunteers.*

(1.) All the officers and men (including the Permanent Staff)

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[1] 17 & 18 Vict., c. 105, sec. 53.

[2] 42 Geo. III., c. 90, sec. 103; 17 & 18 Vic., c. 105, sec. 33. See also 22 & 23 Vic., c. 38, sec. 12; 23 & 24 Vic., c. 94, sec. 15.

[3] 44 Geo. III., c. 54, sec. 22. [4] Ib., sec. 23. [5] Ib., sec. 21.

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when in actual military service are liable to all the provisions of the Mutiny Act (and also entitled to the benefits thereof) in all respects as the officers and soldiers of Her Majesty's Army, except that the Court-martial shall be composed of officers of the Volunteer force only.[1]

(2.) The Permanent Staff of the Volunteer force when *not* on actual service, are subject to all the provisions of the Mutiny Act (and to the benefits thereof), subject to the variations and provisions which the 22nd Article of the Volunteer Act specifies.

IV. *As to the Reserve Force.*

Whenever the Reserve force, or any part thereof, is called out for training and exercise, or when any of such force, having volunteered their services for that purpose, are kept on duty as aforesaid, or when such force, or any part thereof, is called out in aid of the Civil Power as aforesaid, or is called out on permanent service under Her Majesty's Proclamation, all the provisions of that Act and the Articles of War in force shall apply to and in respect of the said force, or such part thereof as may be or ought to be on duty on any of the occasions aforesaid, and the officers and non-commissioned officers appointed to command them, as fully as such Act and Articles may be applicable to and in respect of Her Majesty's regular forces; and offences committed by such officers and non-commissioned officers, and the men of such force as may be or ought to be on duty on any of the occasions aforesaid, may be inquired of and tried by Court-martial assembled under the provisions of any such Act, according to the usual discipline of Her Majesty's Army; and Courts-martial for the trial of any such offences may be holden, and the punishment awarded by any such Court-martial may be inflicted, either during the time for which such officers, non-commissioned officers, and men are or ought to be so on duty as aforesaid, or at any time within twelve months after the offence has been committed or the offender has been apprehended.[2]

V. *The Militia Reserve.*

"During any time for which any men enlisted under this Act may have volunteered to be trained and exercised with any part of Her Majesty's Army, and whenever any men enlisted under this Act are upon army service, all the provisions of the Mutiny Act and Articles of War shall apply to such men, and to all persons whomsoever in respect of them, as fully as such Act and Articles may be applicable to and in respect of Her Majesty's regular forces; and

[1] 26 & 27 Vic., c. 65, sec. 23.

[2] 30 & 31 Vic., c. 110, sec. 12.

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offences committed by such men may be inquired of and tried by Court-martial assembled under the provisions of any such Act, according to the usual discipline of Her Majesty's Army; and Courts-martial for the trial of any such offences may be holden, and the punishment awarded by any such Court-martial may be inflicted, either during the time for which such men have volunteered to be trained and exercised, or (as the case may be) are upon army service, or at any time within twelve months after the offence has been committed or the offender has been apprehended."[1]

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## ( K. )

*Chapter* XI., *par.* 65.

### Note on the Law of Billeting in Scotland before the Union with England.

In Scotland the billeting of troops until the year 1857 was regulated by the law in force at the time of the Union with England.[2] What that law was is not now a matter of much practical importance, though it may be useful to preserve some record of it. It appears to have been regulated by these statutes, viz:—

In 1678,[3] the Act of Convention of Estates of the Kingdom of Scotland.

In 1681, the Act of the third Parliament of Charles II., c. 3.

In 1688, upon the abdication and forfeiture of James VII. of Scotland, it was one of the articles in the claim of right by the estates,[4] "That the exacting of locality and any manner of free quarters is contrary to law."[5]

In 1690,[6] the Parliament of Scotland, having voted King William III. a supply, declared (c. 6), "That all officers and soldiers, horse dragoons and foot, *shall make punctual payment* of their quarters, local and transient, as shall be appointed by any three of the Commissioners, according to the rates of the country;" and, "in case the soldiers did not pay their quarters," the regulations of the Act of 1678 were re-enacted.

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[1] 30 & 31 Vic., c. 111. sec. 11.

[2] In vol. vi.; compare 19 Vic., c. 10, p. 918, with 20 Vic., c. 13, p. 986.

[3] See 139 H. D. (3), pp. 433, 305, 542, 856.

[4] 140 ib., p. 1672. [5] 141 ib., p. 566.

[6] 441 ib., pp. 838-947, 2308-71, 2410.

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In 1693, an Act (c. 4) against false musters and free quarters.

In 1695,[1] an Act (c. 33) on the same subject.

In 1698, an Act (c. 9) on the same subject.

"Upon the most attentive consideration of these laws," wrote Mr. Hay Campbell, in 1787, "it appears to me that prior to 1695, the object chiefly in view was to oblige officers and soldiers to pay for their meat and drink in quarters either local or transient, and to provide for their sustenance, and that of the Dragoon horses, at the public expense, and not at the expense of those individuals upon whom they might be quartered. This seems to have been what was meant by the prohibition of free quartering; and probably at that time the mere article of lodging, independent of meat and drink, was thought of little importance, and consequently no particular attention was given to it. But in the after Acts, 1695, 1696, and 1698, a distinction is evidently pointed out between officers and common soldiers as to the articles of lodging, and coal and candle. These Acts take it for granted that the officers must pay for their lodging, and for coal and candle, in the houses where they happen to be quartered, but that the soldiers are to have their lodging and coal and candle gratis, these articles being furnished to them according to the ordinary condition of the house, and only to the soldiers themselves, but not to their wives and children. The regulation as to soldiers applies equally to local and transient quarters, and therefore it would seem they were entitled to have their lodging and coal and candle gratis in both; on the other hand there seems to be no doubt that officers were obliged to pay for these articles in local quarters, but whether also in transient quarters is not quite so clear.

"So matters stood at the Union, and by the Act 7 of Queen Anne, cap. 3, and other subsequent annual statutes, reference was made to the laws of Scotland preceding the Union by a clause which is uniformly continued in the Mutiny Acts down to the present day in these words:—'That it shall and may be lawful to quarter officers and soldiers in Scotland in such and the like places and houses as they might have been quartered in by the laws in force in Scotland at the time of the Union, and that the possessors of such houses shall only be liable to furnish the said officers and soldiers quartered there, as by the said laws in force at the time of the Union was provided, and that no officer shall be obliged to pay for his lodging where he shall be regularly billeted, except in the suburbs of Edinburgh.' These last words leave it uncertain

[1] Bk. 722, p. 174.

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what is meant by a regular billeting,—whether both local and transient quarters were in view, or only the latter. The practice, I believe, has been various; but perhaps some further enquiry into this may be necessary, as any obscurity in the law may be explained by a general practice, and I think the safest and most advisable course with respect to this matter of billeting officers is to follow out the plan which has been generally understood and practised, in consequence of the Mutiny Acts since the Union, which clearly supposes that there is a certain existing right of billeting officers gratis, and it is only the extent of it which is doubtful, and which may admit of being explained by usage. The rule, however, must be taken, not from a few particular instances in one or two burghs or places in Scotland, but enquiry must be made into the practice in general, as the law must be the same all over Scotland, and it is impossible to establish one rule for the town of Perth and a different one for other burghs in the kingdom.

"Another question arising upon the above clauses in the Mutiny Acts, is whether the articles of coals and candle are comprehended under the word lodging; and it appears to me that they were meant to be comprehended, as in the statutes before the Union, these articles were always spoken of as going together. This, however, may likewise admit of being explained by the general usage which has taken place since the Union."

Again this entry[1] is found:—"I have consulted the Lord Advocate of Scotland on this subject, who is of opinion that officers quartered in this country are only entitled to the billets of private men, and that in several places where it has not been customary to give billets to officers since the Union, it has gone into disuse, and cannot now be claimed, and as the law stands no redress can be had."

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## ( L. )

*Chapter* XI., *par.* 65.

### Note as to the Law on the same Subject in Ireland before the Union with Great Britain.

In Ireland, the billeting of troops was, and to some extent still is, regulated by an Act of the Irish Parliament, passed in the

[1] Bk. 723, p. 182.

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6th Anne, c. 14. The provisions of this statute,[1] so far as they are material to be noticed, prohibit (1) the march of soldiers without their officers, and make the officers responsible for any damage done by the men, (2) the allowance of quarters, "save only during such times as the soldiers shall be on their march, or as they shall be and remain in some seaport town, in order to be transported, or during such time as there shall be any commotion in any part of Ireland, by reason of which emergency Her Majesty's Army or any considerable part thereof, shall be commanded to march from one part of Ireland to another."[2]

The Act also provided for the names of the soldiers billeted being given thus:[3]—"That no civil Magistrates or constable be obliged to find quarters for, or give billets to, more or other soldiers than those only whose true Christian and surnames shall be delivered to him in writing, under the hand of the officer desiring quarters or billets for such soldiers, at the time such quarters or billets are desired; all which names shall be written together, and delivered in one piece of paper signed, as is aforesaid, and the Christian and surnames of every soldier to be quartered or billeted, together with the name of the person on whom he or they shall be billeted or quartered, shall be given in writing by the constable or civil officer billeting or quartering such soldier, and be contained in the billet given by such civil officer."

These provisions were not altered until the year 1779-80,[4] when, upon a recital that the barracks in Ireland were not sufficient to lodge all the forces upon its military establishment, and that it might be necessary to station part of the troops in places where there are no barracks, or not sufficient barracks to hold them, authority was given (by the 19 and 20 Geo. III., c. 16 of the Irish Parliament) to quarter troops in inns, &c., "and where there shall not be found sufficient room in such houses, *then in such manner as has been heretofore customary*,"[5] words that are found in the present Mutiny Act, and justify the practice of billeting troops in *private houses* in Ireland.

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[1] Vol. iv. Irish Stat., p. 153. [2] 6 Anne, c. 14. [3] Vol. iv. Irish Stat., p. 157.
[4] 19 & 20 Geo. III., (I. P.). [5] 191 H. D. (3), p. 325.

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# ( M. )

*Chapter* XIII., *par.* 1.

## A TABLE SHOWING THE NUMBER OF OFFICERS AND MEN EMPLOYED IN EACH YEAR, AS STATED IN THE PREAMBLES TO THE MUTINY ACTS, FROM 1721 TO 1866, BOTH INCLUSIVE.

| Year. | Number. | Year. | Number. |
|---|---|---|---|
| 1720 (18 Com. Journ., pp. 382, 655.) | 14,294 (Home.) 5,546 (Abroad.) | 1750 | 18,857 |
| 1721 (8 Geo I. c. 3) | 12,434 | 1751 (25 Geo. II., c. 2) | 18,857 |
| 1722 | 16,449 | 1752 | 18,857 |
| 1723 | 16,449 | 1753 | 18,857 |
| 1724 | 16,449 | 1754 | 18,857 |
| 1725 | 16,087 | 1755 (29 Geo. II.) | 34,263 |
| 1726 | 24,013 | 1756* | 49,749 |
| 1727 | 22,950 | 1757*[2] (28 Com. Journ., p. 13) | 53,777 |
| 1728 | 22,955 | 1758* (Ib., p. 328) | 52,543 |
| 1729 | 17,709 | 1759 (Ib., p. 636) | 57,294 |
| 1730 | 17,709 | 1760 (Ib., p. 944) | 64,971 |
| 1731 (5 Geo. II., c. 2) | 17,709 | 1761 (2 Geo. III., c. 11; 29 Com. Journ., 29 Aug.) | 67,776 |
| 1732 | 17,709 | 1762 (Ib., p. 502) | 17,536 |
| 1733 | 17,704 | 1763 (Ib., p. 681) | 17,532 |
| 1734 | 25,744 | 1764 | 17,421 |
| 1735 | 17,704 | 1765 | 17,306 |
| 1736 | 17,704 | 1766 | 16,754 |
| 1737 | 17,704 | 1767 | 17,253 |
| 1738 | 17,704 | 1768 | 17,142 |
| 1739[1] (13 Geo. II.) | 35,963 | 1769 | 17,666 |
| 1740 | 46,288 | 1770 | 23,432 |
| 1741 (15 Geo. II., c. 4) | 46,284 | 1771 (12 Geo. III., c. 4) | 17,547 |
| 1742 | 51,519 | 1772 | 17,070 |
| 1743 | 51,936 | 1773 | 18,024 |
| 1744 | 55,425 | 1774 | 18,024 |
| 1745* | 74,187 | 1775 | 21,930 |
| 1746* | 59,776 | 1776 | 20,752 |
| 1747 | 61,489 | 1777 | 90,734 |
| 1748 | 18,857 | 1778 | 20,057 |
| 1749 | 18,857 | 1779* | 30,346 |
| | | 1780* | 35,005 |

During the years marked thus* Impressment Acts were in force.

[1] Six marine regiments consisting of 6930 men were raised and included in the number given in the Mutiny Act (13 Geo. II.), see 11 Parl. Hist., p. 150. The force was disbanded in 1748, but the order was not acted upon until the Marines were re-organised in 1756, and a Marine Mutiny Act was passed (28 Geo. II., c. 11).

[2] In this year the Militia Laws were amended, and by 30 Geo. II., c. 25, England alone had to raise about 30,000 men for home service.

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| Year. | Number. | Year. | Number. |
|---|---|---|---|
| 1781 * (21 Geo. III., c. 21) | 39,666 | 1801 [8] (41 Geo. III., c. 11) | 85,940 |
| 1782 .. .. .. .. .. | 49,455 | 1802 Mar.[4] (57 Com. Journ., p. 790) .. .. .. .. | 84,445 |
| 1783 [1] .. .. .. .. .. | 54,678 | „ June (Ib., p. 964) .. | 70,299 |
| 1784 .. .. .. .. .. | 17,483 | 1803 Mar.[5] (58 ib., p. 711) | 66,574 |
| 1785 .. .. .. .. .. | 17,483 | 1804 (59 ib., p. 462) .. | 129,039 |
| 1786 .. .. .. .. .. | 18,053 | 1805 .. .. .. .. .. | 135,121 |
| 1787 .. .. .. .. .. | 17,634 | 1806 Mar.[6] .. .. .. .. | 134,473 |
| 1788 .. .. .. .. .. | 17,634 | 1807 June .. .. .. .. | 121,529 |
| 1789 .. .. .. .. .. | 17,697 | „ March .. .. .. | 113,795 |
| 1790 .. .. .. .. .. | 17,448 | 1808 .. .. .. .. .. | 124,063 |
| 1791 (31 Geo. III., c. 3) .. | 17,448 | 1809 .. .. .. .. .. | 133,922 |
| 1792 .. .. .. .. .. | 17,013 | 1810 .. .. .. .. .. | 98,780 |
| 1793 (48 Com. Journ., p. 20) | 17,013 | 1811 [7] (51 Geo. III., c. 8) | 84,801 |
| 1794 .. .. .. .. .. | 27,289 | 1812 [8] .. .. .. .. .. | 245,996 |
| 1795 (49 Com. Journ., pp. 28, 45) .. .. .. .. | 60,244 | 1813 .. .. .. .. .. | 227,442 |
| 1796 5 Mar. (50 ib., p. 38) | 119,380 | 1814 [9] .. .. .. .. .. | 236,497 |
| „ 24 Dec. (51 ib., p. 56) | 49,219 | 1815 Mar.[10] .. .. .. | 204,386 |
| 1797 (52 ib., p. 28) .. .. | 60,765 | 1815 June .. .. .. .. | 190,767 |
| 1798 (53 ib., p. 59) .. .. | 48,609 | 1816 .. .. .. .. .. | 176,675 |
| 1799 (54 ib., p. 16) .. .. | 52,051 | 1817 Mar.[11] .. .. .. | 121,035 |
| 1800 [2] (55 ib., p. 122) .. | 80,275 | „ June .. .. .. .. | 121,035 |

[1] The first Mutiny Act for this year (23 Geo. III., c. 17) was passed for a month only, viz., from 25th March to 25th April, 1782. This Act was then continued (by 23 Geo. III., c. 24) till 25th June, 1783. The third Act (c. 52) extended to 25th March, 1784, and reduced the number of the troops to 17,483.

[2] Up to and inclusive of this year the troops on the Irish Establishment (49,073 in number) were governed by a Mutiny Act passed by the Irish Parliament. The last Act (40 Geo. III, c. 7) expired on the 1st of April, 1801.

[3] The Act of this year extended to Ireland, and included the troops on the Irish Establishment.

[4] This Act (42 Geo. III., c. 25) was passed for two months, viz., till the 25th May, 1802, and was extended (by c. 50) to the 25th June. The third Act (c. 88) was passed for a reduced number of men (70299) till 25th March, 1803 (see 36 Parl. Hist., p. 332).

[5] See Army Estimates, 36 Parl. Hist., p. 1044.

[6] This Act (46 Geo. III., c. 15) was only in force for two months, viz., till 25th May, but (by c. 48) was extended to 25th June.

[7] From the words of the preamble in this and in Acts of prior date, I understand that the British troops serving abroad were not included in the number stated therein; but from the amendment made in the preamble of the Mutiny Act, 1812, and continued in later Acts, I understand that the British troops on foreign service were included.

[8] In this and the two following years the number is said to include His Majesty's forces serving in India.

[9] This Act passed in December, 1813, and it is stated that "Foreign Corps in British Pay" are excluded from the number in the preamble.

[10] This Act (55 Geo. III., c. 20) was in force for three months only, viz., until the 24th June. His Majesty's forces in India and foreign corps in British pay are excluded from the number mentioned in this and subsequent Acts to 1816.

[11] Inclusive of the Army in France, and of 15,585 about to disbanded.

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| Year. | Number. | Year. | Number. |
|---|---|---|---|
| 1818[1] .. .. .. .. .. | 133,640 | 1837 .. .. .. .. .. | 89,347 |
| 1819[2] .. .. .. .. .. | 80,841 | 1838 .. .. .. .. .. | 89,305 |
| 1820[3] .. .. .. .. .. | 92,586 | 1839 .. .. .. .. .. | 89,351 |
| 1821[4] (1 & 2 Geo. IV., c. 9) | 81,468 | 1840 .. .. .. .. .. | 93,471 |
| 1822 .. .. .. .. .. | 71,790 | 1841 (4 Vict., c. 2) .. .. | 92,051 |
| 1823 .. .. .. .. .. | 72,140 | 1842 .. .. .. .. .. | 95,628 |
| 1824 .. .. .. .. .. | 76,700 | 1843 .. .. .. .. .. | 100,846 |
| 1825 .. .. .. .. .. | 86,893 | 1844 .. .. .. .. .. | 100,295 |
| 1826 .. .. .. .. .. | 87,240 | 1845 .. .. .. .. .. | 100,011 |
| 1827 .. .. .. .. .. | 87,359 | 1846 .. .. .. .. .. | 108,608 |
| 1828 .. .. .. .. .. | 91,075 | 1847 .. .. .. .. .. | 108,398 |
| 1829 .. .. .. .. .. | 89,723 | 1848 .. .. .. .. .. | 113,847 |
| 1830 .. .. .. .. .. | 88,848 | 1849 .. .. .. .. .. | 103,254 |
| 1831[5] (1 Wm. IV., c. 15) | 88,496 | 1850 .. .. .. .. .. | 99,128 |
| 1832 .. .. .. .. .. | 89,478 | 1851 (14 Vict., c. 6) .. .. | 98,714 |
| 1833 .. .. .. .. .. | 89,419 | 1852 .. .. .. .. .. | 101,937 |
| 1834 .. .. .. .. . | 88,952 | 1853 .. .. .. .. .. | 102,283 |
| 1835 .. .. .. .. .. | 81,271 | 1854 .. .. .. .. .. | 127,977 |
| 1836 .. .. .. .. .. | 81,319 | | |

| Year. | Number. | Number of Her Majesty's Troops in India to be added to the Totals in the preceding Column. | |
|---|---|---|---|
| 1855 .. .. .. .. .. | 193,565 | 29,629 | Inclusive of Officers and Men at the Depôts. |
| 1856 .. .. .. .. .. | 246,716 | 28,363 | |
| 1857 .. .. .. .. .. | 126,796 | 30,199 | |
| 1858 .. .. .. .. .. | 130,135 | 92,739 | |
| 1859 .. .. .. .. .. | 122,655 | 106,902 | |
| 1860 .. .. .. .. .. | 143,362 | 92,490 | |
| 1861 (24 Vict. c. 7) .. .. | 146,044 | 66,729 | |
| 1862[6] .. .. .. .. .. | 145,450 | 83,523 | |
| 1863[7] .. .. .. .. .. | 148,242 | 72,676 | Exclusive of Officers and Men at the Depôts. |
| 1864[8] .. .. .. .. .. | 146,766 | 72,684 | |
| 1865 .. .. .. .. .. | 142,477 | 71,044 | |
| 1866 .. .. .. .. .. | 138,117 | 65,287 | |

[1] Inclusive of the Army in France, and of 4200 to be disbanded.
[2] And 12,276 proposed to be disbanded.
[3] And 676 proposed to be disbanded.
[4] And 11,794 intended to be disbanded.
[5] Continued for one month, viz., till 25th April, 1832, by 2 Wm. IV., c. 18.
[6] Exclusive of 6688 officers and men of Indian Depôts.
[7] Including 9349 officers and men of Indian Depôts.
[8] Including 9349 officers and men of Indian Depôts.

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## ( N. )

*Chapter* III., *par.* 15.

### Note on the Honourable Artillery Company of London.

The oldest corps in the realm, either of the Volunteer or the Regular forces, is that whose designation is placed at the head of this note.

Early in the reign of Henry VIII. an Act was passed (3 Henry VIII., c. 3) the preamble[1] of which is in these words:—"The Kyng our Sovereign Lord, callyng to his most noble and gracious remembrance that by the feate and exercise of the subjecttes of this his realme in shotying in long bowes, there hath contynually growen and been within the same grete nombre and multittude of good archers which hath not oonly defended this realme and the subjecttes thereof against the cruell malice and danger of their owteward enemys in tyme heretofore passed, but also with litell nombre and puyssance in regarde have done many notable actes and discomfetures of warre against the infidelis and other. And furthermore subdued and reduced dyverse and many regyons and countrees to their due obeysaunce to the grete honour fame, and suertie of this realme, and subject and to the terrible drede and fere of all strange nacions any thyng to attempte or do to the hurte or damage of theyme or any of them."

The substance of the enactments contained in the Statute is shewn in these extracts:—

"And over that that every man beyng the Kyng's subjectt, not lame, decreperte, or maymed, nor havyng any other lawfull or reasonable cause or impediment, beyng withyn the age of lx yeres, except to the men, spirituall men, justices of the one benche, and of the other Justices of Assize, and Barons of the Exchequer, do use and excyse shotyng in long bowes, and also to have a bowe and arrowes redy continually in his house to use himself, and do use himself in shotying. And also that the father, governours, and rulers of such as be of tendre age do teche and bring upp theme in the knowlege of the same shotyng. And that every man having a man childe or men children in his house shall provide, ordaine, and have in his house for every man childe, being of the aige of vii yeres and above tyll he shall come to the aige of xvij yeres, a bowe and ij shafts to

[1] See also 6 Hen. VIII., c. 2, and 33 Hen. VIII., c. 7.



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enduse and lern theym and bryng them up in shotyng, and shall delyvre all the same bowe and arrowes to the same yongmen to use and occupie, and if the same yongmen be servaunts that then theyre masters shall abate the money that they shall paye for the same bowes and arrowes of theyre wages, and after all such yongmen shall come to the age of xvij yeres every of theyme shall provide and have a bowe and iiij arrowes contynually for hymself at his propre costs and charges, or ells of the gyft or provision of his friends, and use and occupie the same in shotyng as is afore rehersed.

"And also that buttes be made in every citie, towne, and place according to the lawe of auncient tyme used, and that the [inhabitants] and dwellers in every of theym be compelled to make and contynue such buttes, and to excise thymself with long bowes in shotyng at the same, and ellswhere on holidays and other tymes consistent. And over that it is enacted by the said auctoritie that every Justice of Peace within this realme, or ij of theyme, within their severall jurisdictions, have full power and auctoritie to take, assigne, and appoynt Bowers in iij, ij, or moo places, of their discretion, within every shire, citie, or borowe where the most comen repare and resort is of his subjecttes, and there to inhabite and make long bowes of elme, wiche, or other wood of lytell price and value to serve the comynaltie for the due excise of shotyng, and to take and compell as many of theym as they shall thynke necessarie by theyre discretions to inhabit at suche places for the same, and so in likewise as often as the case shall require and thought behovefull."

At the time of the passing of this Act the Old Artillery Ground of London, upon which the City butts were erected, stood on the site of the present Devonshire-square, and of Duke-street and streets adjacent thereto. To encourage the practice of the Citizens, a Charter was granted on the 25th August, 1537, to the Master of the Ordnance and two others (gentlemen of the Privy Chamber) for the purpose of constituting a Fraternity, consisting of four masters or rulers, and such brethren as they should admit, for promoting the science of artillery, viz., for long-bows, cross-bows, and hand guns. A Civic Guild or Company, with the ordinary government pertaining to such societies was thus created, and out of this society, and subordinate to it, has sprung a Military organization now known as the Honourable Artillery Company of London. These two bodies, so closely associated together, must not be mistaken for each other.

To the Guild or Company was granted the privilege of shooting at fowl all over the kingdom, and of being exempt from all criminal

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proceedings, if, after calling the word "Fast" before shooting, any one should be killed in oversight by passing between the shooter and the butt, so that the butt happens to be in its usual open place.

The Company was encouraged by James I.[1] and Charles I.,[2] who issued commissions under the Great Seal for the setting out and preservation of ranges; the first ranges at or adjacent to the Old Artillery Ground, and the others at or adjacent to the New Artillery Ground at Moorfields. The Military organization of this corps was, I apprehend, a type of the Train Bands belonging to the City and to many other Corporate towns before the Restoration. They were formed under the sanction of the Civic authorities for Local service. Their officers, subject to subsequent approval by those authorities, were chosen by their comrades, and the discipline of the corps was kept up by rules and regulations made and sanctioned in the same manner.

In organizing the militia in Charles II.'s reign it became necessary to dispose of this class of associations, and therefore the Militia Act enacted that the Train Bands, save those of the City of London, should cease after the 25th March, 1663.

This corps did not cease; and under the words of the preamble in that Statute, therefore, "the government, command and disposition" of it came into the hands of the Crown—a power which Charles II. and James II. sought to exercise by *confirming* the appointment of officers, and requiring that no change should be made in them. William III. took a more liberal view of the question. In the first year of his reign he issued a Warrant of 22nd May, 1689, authorising the Company to train and exercise in arms, and to hold free and open Courts for the Annual Choice of officers, according to their Ancient rules and practice. Until the present reign, a licence in the same form was usually granted by each sovereign upon his accession.

The rules and orders of the corps, originally made in 1658, were revised in 1774, with considerable amendment, to give encouragement to His Majesty's subjects to enter themselves as members.

The rules at present in force bear date the 13th June, 1862, and each member upon admission to the Corps signs this declaration:—

"We, the undersigned, being well affected to the Queen and Constitution, do hereby engage upon our honour, so long as we shall continue members of the Honourable Artillery Company, to conform to all Rules and Orders made for its government, to be obedient to our Officers, to be constant in attending to all our Military

[1] Highmone, pp 50, 60.

[2] 19 Rym. Fœd, pp. 398, 470.



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duties, and especially to appear under arms upon all occasions when the corps may be mustered for the purpose of assisting the Civil Power in maintaining tranquillity or suppressing riot."

In 1782 they offered their services as a Military body without pay, in such manner as His Majesty should be pleased to command, for the defence of the metropolis and its environs, although they had no rank assigned to them in the Military forces of the Crown. As it is, they are not of the Militia, but of the Volunteer force, and, as the oldest corps, their place at a Volunteer review is on the right of the line.

In 1792 the Artillery *Company* had a controversy with the Corporation of London representing the Train Bands of London (formed into Militia by virtue of 26 Geo. III., c. 92) as to the New Artillery Ground, which ended in an arrangement for the use of the premises on alternate days by each of the two bodies.

During the present reign the corps has twice undergone some modification. 1. By Royal Warrant of 14th September, 1843; and 2. By Royal Warrant of the 10th February, 1849, under the latter of which warrants the Military organization of the corps is now regulated. All the officers are appointed out of the Company, those holding commissions—by the Crown, and (save the Field and Staff officers) for five years and no longer. All those non-commissioned (save the regimental Serjeant-Major, who is appointed by the Captain-General) by the Lieutenant-Colonel, without limitation to the period of their holding office.

The Commissioned officers, according to the words of their Commissions, are to take rank in the Army only during the time of the corps being called out into *actual service*, and then as the Youngest of their Rank. They are ordered to obey their Superior officers according to the rules and discipline of war, but that discipline must be administered under the Prerogative of the Crown, as the Corps is not named in the Mutiny Act, and unless in the receipt of pay as officers or soldiers, would not be liable to its provisions. It is expressly excepted from the operation of the Volunteer Act, 1863 (26 & 27 Vic., c. 65, s. 52).

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## ( O. )

*Chapter* VIII., *par.* 134.

### The Establishment of Military Prisons.

The Commissioners for Inquiring into Military Punishments (1836) investigated the question whether it would be preferable to establish Military Prisons for the reception of Soldiers exclusively, and conducted by Civilians upon one uniform system, or to continue the then existing practice of sending Soldiers to County Gaols and Public Prisons. Their Report, so far as it relates to the question, is in these words:—"To make these Punishments [imprisonment with or without Hard Labour and Solitary Confinement] such as they ought to be for the *Military*, efficient and proper means of carrying them into execution in the several Barracks should be provided, and Military Prisons should be built. The complaints of the practice of confining Soldiers for Military offences with felons and convicts, will be found to be almost universal. A Soldier, though under Punishment, should not lose sight of the profession *against the rules of which* he has offended; nor should he be placed where he is in contact with men whose notions of Crime are not very strict, and who have none whatever of the nature of a Military offence."[1]

In the year 1839 this Recommendation was partially carried into effect by the Mutiny Act of that and the following years till 1843, giving the power to the Superintendent to appropriate one Pentagon in the General Penitentiary at Millbank (with the approbation of the Secretary of State) as a Prison within the terms of the Mutiny Act, and enabling General Officers to send Soldiers there to undergo their Military Punishment.

In 1844 the further consideration of the system was referred to a Committee of Military officers, who recommended that Imprisonment for any term under twenty-eight days should be carried on in Barrack Cells, but for a longer term in Military Prisons to be established in each District.

The punishment was not to be the treadmill or Hard Labour to degrade the Soldier, but the working Heavy Guns, Piling and Cleaning Heavy Shot. The Establishment was to be Civil, so that offences committed against the Prison Servants should not be punishable under the Mutiny Act; but all the appointments were

[1] See Report, p. 15, and Appendix thereto, pp. 72-81.

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to be conferred on Commissioned and Non-Commissioned Officers of the Army, who, before taking up their duties in the Military Prisons,[1] were to visit other Prisons and become instructed in their discipline. They were to be well paid with liberal salaries, having an annual increase in addition to their half-pay or pension.

In the same year clauses, which, with some slight modification are in the present Act, were inserted in the Mutiny Act (7 Vic., c. 9, s. 27 & 28), to authorize the Secretary at War to set aside any Buildings as Military Prisons, and to exercise over those Prisons all the powers that the Secretary of State may exercise over other Prisons. The Secretary at War was also authorised to make rules and regulations, to alter them, and to appoint and dismiss officers and servants. The Visitors were to be General and other Military Officers of the District, and to have the same powers as Visiting Justices have over other prisons.

No doubt the Counties clamoured for the appointment of other Prisons than their own for the custody of Soldiers; for though Crime is Local, and hence each district must support its own criminals, yet the Soldiers often were not offenders either within the district or against the Civil Law. It was therefore a hardship to have to take the charge of such prisoners at the remuneration of 4*d.* or 6*d.* a day subsistence.[2]

## ( P. )

*Chapter* XIV., *par.* 3.

### The Prussian System of Conscription.[3]

The Prussian Conscripts (which are between one-third and one-fourth of the men attaining twenty-one years of age in any one year) join the Army nominally at the average of nineteen and a half years, but in fact at (say) twenty and a half years. They serve, firstly, for three years in the Regular Army, during which period they are not allowed to marry; secondly, for four years in the Reserve; thirdly, for five years in the Landwehr,—a total service of twelve years, and then they are free. In war the Reserve join the Regular Army

[1] Report of 28 Mar., 1844.

[2] 22 H. D. (O. S.), pp. 29-144; ib. (3), p. 236. The subsistence from 5 Feb., 1673-4, was only 4*d.*; in Sept., 1801, it was 9*d.*; in March, 1822, it was reduced to 6*d.*; in 1860, it was increased to 1*s.*; and in 1869 to 1*s.* 6*d.*

[3] For the substance of this and the following note I am indebted to Colonel Cooke, R.E., C.B., who also compiled the table XXXI., Appendix.

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and Landwehr, and are formed into Battalions for home defence. No substitutes are allowed, and all the youths who escape this Conscription are liable, as the "Ersatz Reserve," to join the Army in war, should men be needed, and the ordinary method of recruiting fail. Each Regiment of the Regular Army is connected with a particular district, from which it draws Recruits, and with the Reserve, the men of which have formerly, and may hereafter, serve in its ranks.

The Officers of the Regular Army, in some proportion, pass through a Military College, and the residue serve as non-commissioned Officers, before they are Commissioned. The Officers of the Reserve and Landwehr are principally landed proprietors, and professional men who have served one year as Volunteers in the Regular Army.

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## ( Q. )

*Chapter* XIV., *par.* 3.

### The French System of Conscription.

The French Conscripts join the Army at the average age of twenty-one years. The Contingent is divided into two portions. The first portion, say 70,000 men, are called up for five years' service in the Regular Army, during which period they are not allowed to marry; then, for four years in the *second* Reserve, and after the first year's service therein they are allowed to marry, and after nine years' service they are free. The second portion form the first Reserve for nine years, and during the first five years they may be called up to augment the Regular Army in war. They are drilled for five months during the first two years. All the other youths exempt from the Contingent are enrolled in the "Garde Nationale Mobile" for five years' service therein, their duty in time of war being as a defensive force. All the youths of France are therefore liable to military service. About one-fifth serve in the Regular Army and second Reserve, one-twentieth in the first Reserve, one-half in the Garde Mobile, and one-fifth are disqualified or exempt. The French Conscript for the Regular Army may exchange into the Reserve, or, within certain limits, obtain a substitute. In France the Regiments are not connected with any particular locality, or with the first Reserve, or with the Garde Nationale Mobile.

The Officers of the Regular Army rise from the ranks. Those of the Garde Nationale Mobile are selected from persons who have formerly served in the Regular Army.

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( R. )

*Chapter* XIV., *par.* 144.

## Outline of the Local Militia Act, 52 Geo. III, c. 38.

The scheme developed by the Act was to establish a Permanent Local Militia by Ballot, without permitting any Substitutes, and to enable the Crown to form an Establishment[1] (within the quota given by the Act) for each county and place by Royal Sign Manual Warrant.

So long as the number of men serving in any county should (in addition to and including the effective Yeomanry and Volunteers but exclusive of supernumeraries above the establishment of such Corps serving without pay), amount to six times the original quota of the Militia of such county fixed under the General Militia Act, no enrolments were to be made; but so often as the number of effective Yeomanry and Volunteers should be reduced by the disbanding or discontinuing their services, or by reason of the effective numbers being diminished, a number of Local Militiamen, not exceeding the amount of such deficiency, were to be forthwith balloted and enrolled until the number of the Local Militia should be equal to the number fixed for the quota. No vacancy arising in any Corps of Yeomanry, by reason of the effective numbers of such Corps being diminished, was to be supplied by Ballot for the Local Militia, unless for six months such vacancy had not been supplied by the voluntary entry of men.[2]

Infantry Volunteers (when not otherwise incapable) might, under the direction of the Lieutenant, transfer themselves into the Local Militia for the same district, and, if they had served on and from the 12th May, 1809, were to be entitled to a Bounty of two guineas, and an allowance for necessaries from the Secretary at War.

Yeomanry and Artillery Volunteers might so transfer themselves, upon terms as to pay, &c., to be directed by the Crown; and vacancies not supplied within six months by the voluntary entry of men were to be supplied by Ballot.[3]

The Ballot was to be applied to persons between 18 and 30 years of age, returned on the General Militia lists, but the Crown might order new lists to be made in such classes (as to age), and in such form as was deemed expedient.

The men chosen by Ballot were to be enrolled to serve for four

[1] Sec. 14. [2] Sec. 16. [3] Sec. 20.

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years,[1] and before enrolment to be examined upon oath, in the form set out in the Act, as to their residence, age, and family.[2]

Persons insuring against the payment of Ballot fines and penalties or paying beyond two guineas (the Bounty under the Act) to Volunteers to serve in discharge of any county, &c., were fined 50*l.* for every offence,[3] for no balloted person was allowed to provide a substitute.[4]

With the consent of the inhabitants, Volunteers belonging to the same or some adjoining place might be enrolled, and a rate established, to the payment of which persons in the Local or Regular Militia were not liable,[5] for paying bounties not exceeding two guineas each.

If persons between 18 and 35, not under 5 feet 2 inches, fit for military service, and not having more than two children under 14, voluntarily enrolled themselves to the full quota, no Ballot was to take place in that parish.[6]

There were the ordinary exemptions from service, including therein poor men having more than two children. Those who had served personally in, or provided a substitute, or paid a fine, for the Regular Militia or Additional Force, were not liable to serve until four years after the expiration of the period of service, or payment of fine, or six years after the enrolment of such substitute. Persons who had fined, and those who had served in the Local Militia, were exempted from service therein for two years from the payment of fine or expiration of service.[7] During their period of service in the Local Militia, and for one year after, men were exempted from service in the Regular Militia; but if they neglected to train in the Local, they were to be at once enrolled in the Regular Militia.[8]

Persons balloted but not appearing to be enrolled were fined according to their circumstances. Persons imprisoned for non-payment of fines, or for refusing to take the oath, or neglecting to attend the annual training, were, after imprisonment, to serve for four years.[9]

The enrolment of servants was[10] allowed, as in the General Militia; and Local Militiamen (save apprentices) might enlist into the Army, Navy, or Marines, or enrol as substitutes or Volunteers in the Regular Militia of the same or some adjoining county.[11] An apprentice could not volunteer, or, being a member of a Volunteer Corps, transfer himself into the Local Militia without the consent of his master; but Ballot, enrolment, and service under the Act were

[1] Sec. 32. [2] Sec. 33. [3] Sec. 34. [4] Sec. 35.
[5] Sec. 36. [6] Sec. 37. [7] Secs. 38, 144; and 52 Geo. III., c. 116.
[8] Secs. 39, 40. [9] Secs. 44, 45. [10] Sec. 62. [11] Sec. 64.

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not in any manner to affect any Indenture of Apprenticeship.[1] Any other person between 18 and 35 years of age, and 5 feet 2 inches in height, not having more than two children under 14 (including members of Volunteer Corps), might voluntarily enrol himself in the Local Militia, to supply a vacancy therein.[2]

The Local Militia, when embodied and drawn out, were entitled to the same pay and allowances as the Regular Militia, to an allowance for necessaries, to the benefit of Chelsea Hospital,[3] and one guinea was to be paid to each man out on actual service, or be laid out for his advantage.[4]

The King might put the force under the command of General Officers of the Regular Forces or the Regular Militia, and order it to be called out yearly to be trained, for not more than 28 days in each year. It was not to be marched out of the county, unless into the adjoining one for the convenience of training.[5]

The Lord-Lieutenant, for the suppression of any riot in the county, or in any adjoining county, might call out the Force; which was to be deemed an assembling for training, and to be notified to the Secretary of State. If so assembled for more than 28 days in *one* year, the extra days were to be deemed part of the training of the succeeding year.[6]

When enrolled or assembled for training, or for the suppression of riot or invasion, the Force was to be subject to the Mutiny Act and Articles of War, but no punishment was to extend to life or limb.[7]

A Local Militiaman (not labouring under any infirmity, &c.) absenting himself from exercise was to be "deemed a deserter," and, if not taken until after the time of exercise, was to forfeit 20*l.* or to be imprisoned. When these men did not return, or were not taken within three months, others were balloted; but, on their return or capture, they were to serve as if no persons had been chosen in their room.[8]

The arms, accoutrements, clothing, and other stores, were to be kept in the place directed by the Commandant, and a general meeting of the Lieutenancy might order a proper place, if one could not be found, for the purpose of keeping such arms, &c., to be built out of the county rates. The Permanent Staff were to be under the command of the Adjutant, and they were to reside constantly within the place where the arms were kept, or as to the staff, within one mile, or as to the Adjutant, within two miles of it.[9]

The Serjeants, &c., on permanent pay might be employed within

[1] Sec. 65. [2] Sec. 66. [3] Secs. 85, 86, and 129.
[4] Sec. 132. [5] Secs. 88, 89. [6] Sec. 92.
[7] Secs. 94, 123, and 137. [8] Secs. 105, 106. [9] Secs. 115, 118.

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their county under the command of the Adjutant, in raising Volunteers for the Regular Forces or Militia.[1]

In case of actual invasion or appearance of an enemy in force upon the coast of any part of the United Kingdom, and in all cases of rebellion and insurrection, the Local Militia, by Order in Council or Proclamation, might be embodied and marched into any part of Great Britain, and kept embodied for any period not exceeding six weeks after the enemy had been driven from the coast, or the rebellion or insurrection had been suppressed; but the Force was not on any account to be ordered to go out of Great Britain.[2]

There was the usual provision that, when the Local Militia was embodied, the King should issue a proclamation for the meeting of Parliament.

When an embodied Regiment was out of its county, a list of men whose time was within four months of expiring,—and when a Regiment was assembled for annual training, a list of men whose time would expire in the ensuing year, and who, in both cases, were willing, at a price not exceeding two guineas, to continue in the service as men then balloted for,—were to be made out by the Commanding Officers and signed by the men. The Deputy-Lieutenants might then re-enrol them as Volunteers for the place for which they were originally enrolled to serve, and pay their Bounties.[3]

As a punishment for enrolled men not joining, or deserting, or absenting themselves from duty, they might be adjudged to further service in the Local or Regular Militia for some period to be limited by the Court-martial, *or to service in his Majesty's other forces,*[4] without limitation as to the period or place of service.[5] Persons neglecting to attend the Ballot forfeited 10*l.*, and were liable to be embodied and to serve over and above the number of men to be chosen by Ballot.[6]

There was a power given to the Crown to increase the Local Militia by Proclamation, that *in addition* to the number of men required by or under the foregoing provisions of the Act, there should be forthwith raised and enrolled such number of men as would, *in addition* to and together with and including the effective Yeomanry and Volunteers serving in such county or such division, or part of such county, together with the Local Militia raised for such county under the provisions of the Act, make the whole Force

[1] Sec. 119. Order, 1813, August 1st; vol. iv. A. R., p. 177; vol. v. ib., p. 50.
[2] Secs. 123-125. [3] Secs. 133-136.
[4] This punishment has been sanctioned by Parliament in several other Enactments (see 42 Geo. III., c. 90, sec. 125; 43 Geo III., c. 50. sec. 5); but, when it was submitted to Parliament in 1867 as the proper punishment for a deserter from the Militia Reserve, it was withdrawn *with an apology*. 187 H. D. (3), p. 880; and see 121 ib., p. 921. [5] Sec. 137. [6] Sec. 140.

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of such county equal to six times the original quota of such county, under the General Militia Act: provided that the effective Yeomanry and Volunteers should be exclusive of supernumeraries serving without pay above the Establishment of such Corps enrolled after the first day of April, 1808.[1]

The Crown, by Proclamation, might reduce and disembody this additional number. The men were to remain liable to serve, and to supply vacancies, for the period for which they were enrolled. No Ballot was to take place while such vacancies could be so supplied.[2]

That the Local Militia should be completed within a definite period, the Act provided that counties, &c., for which the full number of men had not been enrolled before the 14th day of February, should be fined 15*l.* for every man deficient in each parish, to be rated proportionally to the number of men to be raised. The parishes fined, and afterwards supplying the deficiencies, were to be entitled to deduct or to have a return of two-thirds for every man enrolled before the 14th of March, and one-third for every man enrolled before the 1st of April.[3]

Persons serving under the Act, whose property did not exceed the annual value of 20*l.*, were wholly exempt from the rate of payment of fines, and when their property exceeded such sum they were to be rated only to the amount by which such property exceeded the annual sum of 20*l.*[4]

The services of the Local Militia were brought to a termination under the following Act and Order in Council:[5]—

(*a.*) 56 Geo. III., c. 3, sec. 38, May 21, 1816.—By this Act his Majesty was authorised, by an Order in Council, to direct that no Ballot or enrolment for the Local Militia should take place, and that such Ballot and enrolment should remain and continue suspended for the period specified in such Order in Council, and from time to time by any like Order or Orders in Council to continue such suspension so long as his Majesty should deem the same expedient.

(*b.*) June 27, 1816.—By Order in Council of this date, in pursuance of the above-mentioned Act, it was ordered that no Ballot or enrolment for the Local Militia do take place from and after the date of this Order for the space of one year, but that the Ballot and enrolment for the Local Militia do remain and continue suspended for the space of one year from the date of this Order.

Orders were annually made by the Privy Council up to and inclusive of the year 1836, but no subsequent Order can be traced.

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[1] Sec. 155. [2] Sec. 157.

[3] One Return shews that the sum of 70,611*l.* 6*s.* 8*d.* was paid to the Exchequer for Fines (65 Com. Journ., p. 610). [4] Sec. 190. [5] 33 H. D. (O. S.), p. 1008.

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# ILLUSTRATIONS.

## ( I. )

*Chapter* I., *par.* 11.

INDENTURE—CONTAINING AN INVENTORY OF THE ARMAMENT AND FURNITURE OF THE CASTLE OF BERWICK ON TWEED, IN 1539.

THYS INDENTURE, made at the Towne of Berwyke upon Twede, the 20th daye of the Moneth of January, in the Thyrti yere of y^e^ Reigne off our Soverain Lorde Kinge Henry the 8th, Bitwene S^r^ Christopher Moryce, and S^r^ Raynold Carnaby, Knightes, Robert Collynwood, Leonell Graye, and John Horseley, Esquires, Commissioners assigned and auctorised by our sayd Soverain Lorde the King's Highness, That Whereas the King's Highness haith directyd his Commissyon under his Prevy Seale, by the sayd Commissioners, bering date at the Pallays off Westmynster the 22nd Daye off the Moneth of December laste paste, wherin ys contayned the Resoorte of the sayd Commissioners to the Towne off Berwyke, at the 11th or 12th daye of the said Moneth of January, to reseave the same Towne, Castell, and Towre of Berwyke, wyth all the Kayes of the Lokks of all the Gaytes and Posterns off the said Towne, Castell, and Towre, as also all the Ordenaunces, Municyons, Artillarye, and other Habilyments of Warre therto belongynge, of S^r^ Thomas Clyfford or his Assignes, and to deliver the said Towne, Castell, and Towre, with all the Ordenaunces, Municyons, Artillarye, and other Habilyments off Warre therto belonginge into the Handes, Custodye, and Possessyon of S^r^ Willyam Ewry, a^l^s Ivers Knight on the oon Partye, and the said S^r^ Willyam Ewry, alias Ivers on the other Partye, WITNESSETH that the sayd Commissyoners, accordinge to the said Commissyon, have reseavyd and delyvered the sayd Towne, Castell, and Towre of the Brydge, with all the Kayes of the Lokks of all the Gaites, Posterns, as also with all the Ordenaunces, Municyons, Artillarye, and Habillyments of Warre thereto belonginge into the Handes, Custodye, and Possessyon of S^r^ William Ewry, a^l^s Ivers, to the Kings use, the 20th daye of January aforesayd, Nevertheless the said S^r^ William Ewry, a^l^s Ivers, was

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present and redy, at the said Towne of Berwyke, with foure of the sayd Commissioners, at the 12th daye of January aforesayd, according to the effecte of the sayd Commission, to have reseavyd the said Towne, Castell, and Towre, But that oonly for the Absence of Sir Christopher Moryce, at the sayd 12th daye off January, the Delyvery of the sayd Towne, Castell, and Towre was dyffarryd unto his commyng to the sayd Towne of Berwyke, wyche was the 19th daye of January, And so the 20th daye of the said Moneth of January the sayd Commissyoners delyvered to the sayd Syr William Ewry als Ivers the sayd Towne, Castell, and Towre, with all the Ordenaunces, Municyons, Artillarye, and Habyllyments off Warre therto belonginge, as by Particuler Parcelles here after ensuyth, besydes the Implements wyche ar conteyned in a Cedull unto thys present Indentures annexed, That ys to saye, fyrste, at the Hall doore w^th^in the sayd Castell, a double Cannon of brasse, unmountyd, with Seven Score and two Shotte of Iron for the same, two Bombardelles of Iron, unmountyd, and a Chambar of Iron for either of the same, with 39 Shotte of Stoone for the same Bombardelles, foure Score and Five Shotte of Iron for a Demy Cannon, 31 Stoone Shotte and no Pece for them, Item in the Bownkell Towre, thre Serpentynes stokkyd and bound with Iron, with forlokks, and two Chambars of Iron for every of the same, Two Sledges of Iron, a Fowler of Iron stokked and bounde with Iron, with forlok and syxe Chambars for the same, and upon the head of the same Towre a Saker of Brasse, of the fyer brande of Homfrey's makinge, mountyd uppon Shod-Whelys, with Ladell and Sponge, a Fawcon of Brasse called the Porteculles, of Homfrey's makinge, mountyd upon Shod Whelys, with Ladell and Sponge. Item in Clayton's Towre, thre Serpentynes stokked and bounde with Iron, A Payre off olde Saker Whelys bounde with Iron, and uppon the same Towre hed a Saker of Brasse of Skottyshe makinge, mountyd upon Shod Whelys, wyth Ladell and Spounge. Item uppon the Walles at the Bakehouse Ende, a Saker of Brasse of Skottyshe makinge, called the Thystell, mountyd upon Shod Whelys, with Ladell and Spounge, A Fawcon of Brasse of Homfrey's makinge, mountyd with Shod Whelys, with Ladell and Spounge. Item upon the Leades over the greate Chambar, toward the Water, a Fawcon of Brasse of the Fier Brande, with oon olde Stokke uppon Shod Whelys, with Ladell and Spounge. Item upon the Olde Towre hed, a Fawcon of Brasse, of the Fyre brande, mountyd uppon Shod Whelys. Item in the littell House in the Walle, besyde Bownkell Towre, 22 Straeks of Iron for Saker Whelys, 28 Shott of Leade, Dyced with Iron, for a Saker, ten Shotte of Leade for a Fawcon, Two Bollts of Iron, with Rampaires, and thre houpes of Iron, A Payre of Olde Saker-Whelys,

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bounde with Iron. Item in the Hawke House, half a Laste of Gunepowder, 41 black-Bylls helvyd, 44 Byll Heeds unhelvyd, 24 Shotte of Iron for a Saker, four Shott of Iron for a Demy Culveryn, a greate brasse Morter, with a Pestell of Iron, for making of Powder. Item in the Gonners Chambar 28 Hagbusshes of Iron 2 Hagbushes of brasse, 11 Chambars for Serpentyne, a Chambar of Iron without, A Hawll a Stamp of Iron for Hagbushes wyth a Worme at th' Ende. Item in the Ordenaunce house in the Downgeon fourscore Spads, and oon shod with Iron, Thre Score and 5 Schovells shod with Iron, 40 Pykeaxes helvyd, 53 Bowes of yough wraiks, 26 Dosyn Bowestrengs, 27 hoole Barrelles, and fifty and 7 half Barrelles of Gonnepowder, 15 Pece of lettes calteroopes, A Barrell full of Cole, 14 Payre of Dowlays for Wheles, 23 Bolts of Iron for ordenaunce, 5 bounds of Iron for Gonne-Stokks, a Barre of Iron for oon Axeltre, 5 Lynspynnes of Iron, Two Forlokks for Stokks to Ordenaunce, A moulde of Iron for a Serpentyne, Thre Chaynes of Iron, A Barre of Iron for a Windoes, 23 Straiks of Iron for Saker and Fawcon Whelys, 24 Houpes of Iron, 4 Boxes of Iron, Two cressetts, Syxe hondreth Shotte of Leade for a Serpentyne, Thre hundreth Shotte of Leade for a Fawcon, four Score Shotte of Leade for a Slang, 16 Shotte of Leade for a Saker, Two hundreth Shotte of Leade for Hagbushes, A greate Axeltry, Item in the Armery above the Hall 9 olde Salletts, Foure Payr Almane Ryvetts good, 15 Payr Almaine Ryvetts rusty and brokyn, Syxe Stele Gorgetts, 5 Payre of Splents, a Barrell and a Hawlk for a Gynne, Item in th' Ordenaunce house above the Armery, 13 Score and 5 Sheves of Arroes, 13 Hedstalles, 51 Horse Collers, 51 Olde Horsetrasys, a greate Hawser, 5 Score and 13 Moryspykes, Thre Shevers of Brasse, 11 Cressetts of Iron, Two chests of Arrowys, Item in the Towre at the End of the Whyte Walle, 8 double Hagbushes, Item in the Towre of the Bridge upon the hed of the same a Serpentyne of Brasse mountyd upon oon olde Stok, with shod Wheles with Ladell and Spounge, 12 Shott of Leade for the same, Item benethe in the same Towre Ten Hagbusshes of Iron with thre Score Shotte of Lead for the same, a Sledge of Iron, 30 Shotte of Leade for a Fawcon, Thre Trestelles for Hagbusshes, a Ledder Bag wyth Powder, In Witnesse wherof to the Partyes of thiese Indentures The sayd Commissyoners and S^r^ Willyam Ewry als Ivers have interchangeably sette their Seales and subscribyd with theyr awne handes the daye and year above sayd.

WYLLM EWRE.

Implements of Household remainynge in the Kings Castell aforesayd and delyvered as above sayd hereafter doith ensue.

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*Fyrste in the Hall.*—4 Great standyng Tables, with Fourmes for either Syde of the same, a Cubbard, a Payre of Stokks of Wood, a Paire of Tongs, a Fyre Shovell of Iron.

*Item in the little howse in the Syde of the Hall.*—A Bed, with a Lok and a Keye for the Doore of the same Howse.

*Item in the Pantre.*—A longe Bynge of Okyn Thymbar, with thre Particyons, a little Armerye of Wood, a little Lokker with a Shelf of Woode, a Chyppynge Burd, with a Lok and a Keye for the Doore of the same Howse.

*Item in the Buttre.*—4 Payer of Geests of Woode dormint, Two Payer of Geests movable, a Cubburd, with a Lok and a Key for the Doore of the same howse.

*Item in the Great Chamber.*—Two longe Tabelles, with two Trestelles, 2 Fourmes, 3 Buffett-Stooles, two Chayres, a little Table, oon Iron-Chympney, a Cubburde.

*Item in the Capitaines Chamber with three other chambers nigh the same.*—3 Beddes, a Closse-Presse, with a Lok and a Keye, oon Iron Chympney, a Cubburde, a little Table, Twoo Trestells, a Payr of Tongs, a Porr, and a Fyre-Shovell of Iron, 8 Lokks, and Syxe Keyes for the Doores of the same Chambars.

*Item in the Cellar.*—Two Payer of Geests of Woode, a little Armerye, a Standynge Bourd, a Lok and a Keye for the Doer of the same Howse.

*Item in the Wardrope Chambar.*—Two Beddes, and a Lok and a Keye for the Doer of the same Howse.

*Item in Two Chambars above the Kytchen.*—Two Bedds, with a Lok and a Key for either Chamber Doer.

*Item in the Porters Lodge.*—A Stande-Bed, a little Burd, a Fourme and oon Amerye.

*Item in the Chappell.*—A Cheste, with a Lok and a Keye to the same, oon olde Masse-boke, a longe Fourme, a Short Fourme, a Bell.

*Item in the Chappell-Chambar, and the Chambar behynde the Chappell.*—3 Bedds, with a Lok and a Keye for either Doer.

*Item in Two Chambars in the Doungeon.*—6 Bedds.

*Item in Two Chambers in the Gonners Towre.*—3 Beddes, a longe Burde, Two Trestells, a Lok and a Keye for the Doer of either Chamber.

*Item in the Chamber above the West Gayte.*—A Bed, and a Lok and a Key for the Doer.

*Item in the Constable Chambar.*—2 Bedds, 2 Fourmes, a Lok and a Key for the Doer.

*Item in the Kytchyn.*—A Greate Chymney of Iron, a Payre of Galloes of Iron for the same, Thre Crooks of Iron, 2 greate Raks of Iron, a Por of Iron, 2 Spytts, a Small Rake of Iron, 3 Dressynge-

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Bourdes, a Payer of Mustarde-Stoones, a Panne sett in a Fonrys. In the Pastry, a greate bourde. In the Larder, a Bourde, a greate Cheste.

*Item in the Bakehowse.*—3 Trowes of Woode with Coverings, two Pealys, oon Iron Porr, a Lok and a Keye for the Doer.

*Item in the Brewhouse of the Greens.*—A Copper Panne, two Coop Kettelles, 4 Greate Fatts of Wainscote, a Wort-Trowe, 4 Oores, 6 Tubbys, an Iron Porr.

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## ( II. )

*Chapter* I., *par.* 22.

### Letter from the Duke of Richmond, upon the Defence Act, 1803, and the King's Orders issued thereunder.

Sir, Whitehall, *November* 3, 1803.

The very important contents of your letter of the 31st of last month, and the difficulties they lay me under, oblige me to trouble you for further explanations and commands.

The first thing pointed out for me to do is to have a confidential communication with the General officer commanding in my district, on the subject of His Majesty's warrant therewith sent to me, by which I presume is meant General Sir David Dundas, who commands in the southern district, of which the county of Sussex makes a part.

On this point I have to represent to you that General Sir David Dundas having fixed his head-quarters out of the county of Sussex, at Canterbury, and his attention being chiefly taken up in that quarter, I have had but few opportunities of seeing him; and as communications by letter at such a distance would lose much time, I have of late communicated only with Sir James Pulteney, the Lieutenant-General commanding in Sussex under General Sir David Dundas, on the subject of such commands as I have received from you, and acted according to his directions, trusting that he would inform Sir David Dundas of everything he was doing, and that not hearing anything to the contrary, it met with Sir David Dundas' approbation. This I ventured to do concerning lesser objects; but when one of such magnitude as laying waste the property of my neighbours is required of me, under the authority of an Act of



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Parliament, I am sure, sir, you will agree with me that the requisition for so severe an operation ought to come from those who are distinctly authorized under the powers given to His Majesty to make it. The words of the Act are, "On the requisition of the officer commanding within the district, or such other person as His Majesty shall specially empower to make such requisition."

I must therefore understand that for the present it is only Sir David Dundas, as the officer commanding within the district, that can make such requisition; and if it is intended that a similar power should be given to Sir James Pulteney, or any Generals or other officers under him, he or they must be specially empowered so to do by His Majesty.

The next thing I am directed to do is to communicate with such of the Deputy-Lieutenants as I may think fit on the subject of the King's Warrant.

For fear of any inconvenience to the public service arising from delay, I wrote by last night's post to the eleven Lieutenants of Divisions of Rapes, apprising them of the substance of the King's Warrant and desiring them (perhaps without sufficient authority so to do) duly to attend to any requisitions they might receive relative to the execution of the Act from Sir James Pulteney.

But as to further communication with them, and doubtless much is necessary, it would by letter take up much time, and could not answer the purpose of discussion on a variety of details that seem necessary to be settled at a general meeting of the Lieutenancy, and you are doubtless aware that I have no power to call one till after ten days' notice in the 'Gazette.' I therefore fear this part of your orders must suffer delay.

I presume that although my communication may be with such of the Deputy-Lieutenants as I may think fit, yet that *all* are by the King's Warrant to have an equal power of executing the Act of Parliament.

You next suggest, as one of the most material objects to be attended to, the removal of the horses and draft cattle, as well as carriages, and specify the purposes for which they may be wanted, viz., the service of the army, the more speedy conveyance of troops, the forwarding the military and commissariat supplies of all kinds, as well as the transport of the infirm women and children; but you do not express the order and succession in which these different and very important services are to be undertaken, and, unless they are previously and precisely arranged, I foresee much confusion in attempting them all at once.

The General officer will no doubt make such arrangements and give such directions as shall seem to him most proper. But I fear

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none that he can make will render it possible to carry into execution the plan that is chalked out; because, after the most mature investigation of a general meeting of the Lieutenancy of Sussex of a similar plan at the close of the last war, it was demonstrated by figures to Government to be utterly impracticable, and such representation was then fully approved of by Lord Hobart, and, I have since understood in conversation, by Mr. Addington.

If the cruel idea (for you must allow me to call it so) of destroying the country that may be apprehended in danger of falling into the enemy's hands (and that apprehension may in some minds extend very far), is to be carried into execution, no doubt but that the inhabitants of all kinds must be previously removed, otherwise they would be left to starve, and under the power of a merciless enemy, and the more so from the country having been laid waste before him.

But to remove the infirm women and children there must be left carriages with horses or draft cattle, and accordingly this service is amongst those you have enumerated to be first attended to; but when the detail of the execution comes to be examined I doubt the proposition of the carriages, horses and cattle requisite for such removals will be so great as to leave very little indeed for any of the other services pointed out to be equally necessary. So that if they depend upon supplies of this kind till after this is over they must be disappointed.

But this is not all, and a far worse consequence will, I fear, ensue. The removal of the infirm women and children in carriages, such as waggons and carts, must be a slow operation from its nature, the numbers that must go from any considerable extent of country, the cross roads they must take, and the unavoidable delays they must meet with, which may occasion both the miserable inhabitants and the draft cattle to fall into the hands of an alert enemy, who may thereby obtain in a considerable degree that most essential object for him, cattle to draw his artillery and ammunition; and if, to prevent this, the removals are made early, the uncertainty of what may be necessary will make them more extensive and cause more dissatisfaction from their being, perhaps, afterwards found unnecessary, and this will be the case from the great apprehension the General must have, if he is ordered to clear the country before the enemy, of not doing enough, and in time; to avoid which he will probably do a great deal more than is necessary, to the total ruin of the unfortunate country that falls within the circle of his cautionary measures.

The most essential of all measures, undoubtedly, is the depriving the enemy of all draft cattle whatever; but I fear this is incom-



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patible with the destruction of the stock whether live or dead—because that induces the necessity of removing the inhabitants, and their removal must detain the draft cattle so as to endanger their falling into the enemy's hands.

If instead of this idea of destroying the country, which I hoped and understood had been given up (and which will be found impracticable), we left, as is usual in war, such portions of it as the enemy may for a time get possession of, in the state it may be in, except as to mills, roads, and bridges, which will have been rendered useless but with such of its inhabitants as do not bear arms, and cannot remove themselves, and the provisions that it may contain, we may then hope effectually to remove all the draft cattle in time. To execute that most important object well, we must not attempt others that, besides being impracticable, will only perplex and endanger the success of this.

It is undoubtedly right to deprive the enemy of subsistence, if we can; but it can scarcely be supposed that, with any prudence, he will rely on what he can find here at his first landing to feed his army. He must bring with him, though perhaps a scanty provision, enough to carry him forward either to a decisive battle or till he shall have possessed so much country as must afford him supplies: and I must confess it appears to me a disgraceful, and I fear too a dangerous, thing to hold out to the country that we must ourselves destroy, to prevent the enemy's getting possession of it. I hope and trust that we have other and better means of repelling him.

If this system of destruction is laid aside, I see little difficulty, under proper regulations, of effectually removing the draft cattle. But the measure now standing under the King's authority in your orders must remain, whatsoever may be the consequences, till countermanded.

I wish to know whether the assurances of indemnification to the proprietors, under the restrictions you have mentioned, whether for draft cattle or stock, should be done publicly in the newspapers or only privately when the occasion occurs.

In respect to the pioneers which you call a corps, and desire they may be kept complete, I must beg of you to recollect that I have received no orders for forming any such corps. A number of men offered themselves as pioneers when the schedules were first sent round the parishes, and, if I mistake not, I did recommend their being engaged by a bounty and formed into a corps; but nothing of that kind has been done. Their offers remain, but that is all, and from the changes of service that take place in October many of them may not now be to be found in the same parishes they offered for; as to the officers, Mr. Kemp, late member of Parliament

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for Lewes, has offered to be a captain of pioneers, and I beg leave to recommend him as such, and I doubt not but he will find a large corps to act under him; but until some system of enrolment is settled it is impossible to say what numbers can be depended upon, and without the same exemptions as the Volunteers, or some other encouragement, I fear we shall get no enrolment for pioneers or officers for them.

Sir James Pulteney, who already corresponds with the Lieutenants of divisions of Rapes, has suggested to them some arrangement about pioneers which they will certainly attend to; but I fear that without some encouragement little will be done towards forming corps of them previous to an enemy's landing.

In respect to the provisional orders your letter mentions, for the assembling the Yeomanry and Volunteer force in Sussex upon the approach of the enemy, and fixing their stations of rendezvous, nothing has yet been done. It, of course, belongs to the General to point out the places where, according to his plans of defence, he may most want them, and in what number at each. All that belongs to me, as Lord-Lieutenant, is, when the General has fixed on the places and signals, to direct the Yeomanry and Volunteers to repair to them when so called upon. But I believe Sir James Pulteney, with whom I have conversed on this subject, waits to know what Volunteers he will have to call upon; and although I believe the raising them is proceeding as fast as the nature of Volunteer service will permit, yet it is impossible for me as yet to inform him what the amount of them will be.

Sir James Pulteney has already begun to erect beacons on the most proper spots for that purpose.

I have sent to Colonel Lyon (although he has never been notified to me as Inspecting Field Officer for Sussex in the room of the officer you first named), the best account I could of all the Yeomanry and Volunteer corps in Sussex. The making out the returns I presume now rests with him.

In regard to the formation of Yeomanry cavalry and Volunteer infantry into regiments or battalions, all has already been done that was possible; but much is undone by the whims of the Volunteers in different places, some of which will, and others will not, unite with others, and we must submit to their will and pleasure.

Understanding that the Board of Ordnance has orders to supply us with 5000 stand of muskets, which I fear is more than we shall find Volunteers for on the present system, I have had no occasion to apply for pikes, except in a very few instances; and I wish to avoid it as much as possible, thinking the introduction of them into the hands of the lower orders of the people, after

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the use that has been made of them in Ireland, a very dangerous measure.

I beg leave to mention that many of the Volunteer officers feel a diffidence in acting till they see their names as regularly appointed officers in the 'Gazette,' and all call out for adjutants, serjeant-majors, and drummers on pay.

I have the honour to be,
Sir,
Your most obedient humble servant,
(Signed) RICHMOND.

*Right Hon. Ch. Yorke,*
*&c., &c., &c.*

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## ( III. )

*Chapter* II., *par.* 6.

### COPY OF COMMISSION[1] (IN 1624), ISSUED BY JAMES I. TO THE MAYOR OF DOVER, AND OTHER PERSONS, TO EXECUTE MARTIAL LAW.

"WHEREAS we are given to understand that of those troops and companies of soldiers which are now come together by our Commandment, and met at Dover, or the places thereabouts, in the county of Kent, to the end to be from thence transported into parts beyond the seas with all convenient speed; that many of them are so disordered and disobedient to their commanders, as that they presume to commit divers outrages, and with such violence as that the peace of our said country is much disturbed, and many of our loving subjects put in fear of their lives, and have their houses and goods violently entered upon and taken away by force.

"We, therefore, taking the same into our princely consideration, and being more desirous to keep our people from doing mischief than to have cause to punish them for doing, out of our gracious care to prevent the said disorders and outrages by suppressing them in their beginnings, before they go too far, have of our especial trust and confidence reposed in your approved wisdoms and fidelities, appointed you to be our Commissioners, and do by these presents

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[1] 17 Rcg. Fœd.. p. 647.

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give unto you, or any three or more of you, full power and authority in all places within our said county of Kent, as well within the Cinque Ports, or any other liberty, as without, to proceed according to the justice of Martial Law against such soldiers within any of our lists aforesaid, and other dissolute persons joining with them or any of them, as during such time as any of our said troops or companies of soldiers shall remain or abide there, and not be transported thence, shall within any the places or precincts aforesaid at any time after the publication of this Commission, commit any robberies, felonies, mutinies, or other outrages or misdemeanours, which by the Martial Law should or ought to be punished with death, and by such summary course and order as is agreeable to Martial Law, and as is used in armies in time of war, to proceed to the trial and condemnation of such delinquents and offenders, and them cause to be executed and put to death, according to the Martial Law, for an example of terror to others, and to keep the rest in due awe and obedience.

"To which purpose our will and pleasure is that you cause to be erected such gallows or gibbets, and in such places as you shall think fit, and thereupon to cause the said offenders to be executed in open view, that others may take warning thereby to demean themselves in such due order and obedience as good subjects ought to do; straightly charging and commanding all Mayors, Sheriffs, Justices of the Peace, constables, bailiffs, and other officers, and all other our loving subjects whatsoever, upon their allegiance to us and our Crown, to be aiding and assisting unto you, and such three or more of you as aforesaid, in the due execution of this our Royal Commandment: And these presents shall be unto you and every of you a sufficient warrant and discharge for the doing and executing, and causing to be done and executed all and every such act and acts, thing and things, as any three or more of you, as aforesaid, shall find requisite to be done concerning the premises.

"In witness whereof, &c.

"Witness our self at Cambridge the thirtieth day of December."

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# ( IV. )

*Chapter* II., *par* 9.

## Extract from the Petition of Right.[1]

"Whereas also by authority of Parliament, in the 25th year of the reign of King Edward III., it is declared and enacted, That no man shall stand forejudged of life or limb against the form of the Great Charter and the laws and statutes of this Realm; And by the said Great Charter and other laws and statutes of this your Realm, no man ought to be adjudged to death, but by the laws established in this your Realm, either by the customs of the same Realm or by Acts of Parliament:

"Whereas no offender of what kind soever is exempted from the proceedings to be used, and punishments to be inflicted by the laws and statutes of this your Realm; Nevertheless of late, divers *Commissions*, under your Majesty's Great Seal, have issued forth, by which certain persons have been assigned and appointed Commissioners, with power and authority to proceed, within the land, *according to the justice of Martial Law*, against such soldiers and marines, or other dissolute persons joining with them, as should commit any murder, robberies, felony, mutiny, or other outrage or misdemeanor whatsoever; and by such summary course and order as is agreeable to Martial Law, and is used in armies in time of war, to proceed to the trial and condemnation of such offenders, and them to cause to be executed and put to death according to the Law Martial:

"By pretext whereof some of your Majesty's subjects have been, by some of the said Commissioners, put to death, when and where, if by the laws and statutes of the land they had deserved death, by the same laws and statutes also they might, and by no other ought to, have been judged and executed:

"And also sundry grievous offenders, by colour thereof claiming an exemption, have escaped the punishment due to them by the laws and statutes of this your Realm, by reason that divers of your officers and ministers of justice have unjustly refused or forborne to proceed against such offenders according to the same laws and statutes, upon pretence that the said offenders were punishable only by Martial Law, and by authority of such Commissions as afore-

[1] 3 Car. I., c. 1; see Vol. v. Statutes of the Realm, p. 24.

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said; which Commissions and all others of like nature are wholly and directly contrary to the said laws and statutes of this your Realm:

"They do therefore humbly pray your most excellent Majesty . . . . . that the aforesaid Commissions for proceeding by Martial Law may be revoked and annulled; and that hereafter no Commissions of like nature may issue forth to any person or persons whatsoever to be executed as aforesaid, lest by colour of them any of your Majesty's subjects be destroyed or put to death contrary to the laws and franchise of the land."

## ( V. )

*Chapter* II., *par.* 17.

### Appointment of Commander-in-Chief and Generals under him by Chas. I., in 1638.

Mem^m. quod 7° die Martii Anno Regni Regis Caroli 14 Billa ista deliberata fuit Domino Custodi Magni Sigilli Angliæ apud Westmon^m. exequend.

Charles, by the Grace of God, of England, Scotland, France, and Ireland, King, Defender of the Faith, &c. To our Right Trusty and Right well-beloved Cousin and Councillor, Thomas Earl of Arundel and Surrey, Earl Marshal of England, and Knight of the most noble Order of the Garter, greeting:

Know ye, that we, reposing special trust and confidence in your approved wisdom, fidelity, valour, and great ability, have assigned, made, constituted, and ordained you to be the General of our Army, intended forthwith to be raised, and over all our men which be or shall be levied in all our Counties of this our Realm or Dominion of Wales, and assembled or to be assembled to any Army or Armies, to resist and withstand all Invasions, Tumults, Seditious Conspiracies, or Attempts that may happen to be made against our Person or State; and to Rule, Govern, Command, Dispose, and employ the same Army, and all officers so employed, or to be employed concerning the same, with all such further Forces, of what station soever, as shall be hereafter joined thereunto, for their supply, for the accomplishment of such Executions, Defences, Offences, and other Services as are or shall be by us from time to time directed, limited, and appointed in or by

Lord Marshal's Commission.

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such private instructions as are herewith delivered unto you under our Signet Manual: And further, We have given you full power and authority that the same persons so levied or assembled, or so to be levied or assembled by you, or sent, conducted, or brought, or that otherwise shall come to you, either by our several orders, or by authority of this our Commission as aforesaid, to try, array, and put in readiness, and them and every of them after their abilities, degrees, and faculties, well and sufficiently cause to be weaponed and armed, and take or cause to be taken the Musters of them, or any other of our Trained Bands, within this our Realm of England and Dominion of Wales, from time to time, in places most meet for that purpose after your good discretion. And also the same, our subjects, so arrayed, tryed, and armed, as well men-of-arms, as horsemen, archers, and footmen of all kinds and degrees, meet and apt for the wars, to govern, lead, and conduct against all and singular our enemies attempting anything against us, our Crown, and Dignity; and our said Army to divide, distribute, and dispose, and the same, or any part thereof, to convey by land or by water, as occasion shall require, according to your good discretion; and with the same Enemies, Rebels, and Traitors to fight, and them to Invade, Resist, Repress, Pursue, and Follow, into any our Dominions, and them to subdue; and to do and fulfil all and singular other things which shall be requisite for the leading, government, order, and rule of our said Armies and Subjects, and for conservation of our Person and Peace: And further, to do, offer, and execute against the said Enemies, Rebels, Traitors, and their adherents, and other Delinquents and Offenders as need shall require by your discretion, by the Law Martial as our General. And of such apprehended and brought into subjection, to save whom you shall think good to be saved, and to slay, destroy, and put to execution of death, such and so many of them as you shall think meet, by your discretion, to be put to death by any manner of means, to the terror of all other offenders: And we do further give unto you our General, full power and authority, for us, and in our name, as occasion shall require, according to your good discretion, by Public Proclamation, to make tender of our Royal Grace and Pardon to all such Traitors, Rebels, and all other offenders as shall submit to us, and design to be relieved by our mercy. And further, our will and pleasure is and by these presents we do give you full power and authority, that in case any Invasion of enemies, Insurrection, Rebellion, Riots, Routs, or unlawful Assemblies, or any like Offences shall happen to be moved, that then, as often as you shall perceive any such misdemeanour to arise, you, with all the power you can make, shall with all diligence repair, and send

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convenient forces to the places where any such attempt, invasion, unlawful assembly, insurrection, or rebellion shall happen to be made; and subdue, repress, and reform the same, as well by battle, or other kind of force, as otherwise by the law of the Realm, or the Law Martial, according to your good discretion: And for the better execution of this our Commission, we do further give you power and authority from time to time to command and require of all our Lieutenants special, and their Deputy-Lieutenants of the several Counties of this our Realm, or Dominion of Wales, to send to you such numbers of able men for the wars, as well horsemen as footmen, of the Trained Bands, or other, sufficiently armed and furnished, to such place and places, and at such time and times, as you in your wisdom shall appoint and require: which said forces you are to govern, order, and dispose, as your present occasions shall require for the advantage of our Service, according to your good discretion: And further, for your better assistance in this our Service, We do hereby assign, make, constitute, and ordain, our right trusty and right well-beloved Cousin, Robert Earl of Essex and Erne, Viscount Hereford and Bourchier, Lord Ferrers of Chartley, Lord Bourchier, to be our Lieutenant-General of this our Army, and our right trusty and right well-beloved Cousin and Commander, Henry, Earl of Holland, Lord Chief-Justice and Justice of Eyre, of all our Forests, Chases, Parks, and Warrens on this side Trent, First Gentleman of our Bedchamber, and Knight of the most noble Order of the Garter, to be our General of our Troops of Horse, to serve in our said Army for the execution of this our Commission, according to such directions as from time to time you shall think fit to give unto them: And further, we do give you power and authority to appoint within our said Army a Provost Marshal, to use and exercise that office, in such case as you shall think fit to use the said Law Martial: And we do also give you our General, full power and authority by these presents, to hear, examine, and debate, as well by yourself as by your sufficient deputy or deputies, all criminal causes growing and arising within our said Army, as well concerning the death of any person as loss of member; and all causes civil, whatsoever they be, that shall happen or chance, within this our said Army: And also we give you full power and authority to make, constitute, and ordain Ordinances and Proclamations from time to time, as the case shall require for the good government, rule, and order of our said Army, and the same and every one of these causes to be duly proclaimed, performed, and executed, and whomsoever you shall find contemptuous, disobedient, or disorderly in our said Army, to attach, apprehend, and imprison,

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and them and every of them to chastise and punish; and such as shall be imprisoned, you shall cause them to be proceeded against, according to the quantity of the offence, as well by pains of death, as loss of member or otherwise, according to your discretion, and to deliver and set at liberty any person so imprisoned, as by you shall be thought convenient: And for encouragement of fit and deserving persons, we do give you full power and authority in our absence to reward and honour, with the Order of Knighthood, and of Knights demerits, such as in your discretion shall deserve the same in this our present Service, and to grant and assign them Arms and Ensigns of Arms, as is need, and to the office of a General appertaineth: And we do further give power and authority to you our General, for causes especially moving you, by your letters under your seal, from time to time, when and as often to you shall seem meet, to grant safe-conduct, general and special, in all places, by land or by water, to any persons whatsoever, and generally to do and execute all and everything and things which to the office of a General of our said Army doth belong and appertain; and which, for the good and safe government of our Army and subjects, shall be thought expedient and necessary: And for the better execution of this our Service, We do further give you our General full power and authority as occasion shall require, to command all our forts and castles, now fortified or hereafter to be fortified in or near the parts or places where our said Army from time to time shall be, and to remove, displace, and continue the Captains, Lieutenants, and Souldiers, and Garrisons there, as cause shall require, and to furnish the same castles and forts with other Captains, Lieutenants, and Souldiers, as you shall think meet for the safety and good of the Army, and the advantage of this our Service: And we will and command you our General, that with all speed you do execute the premises with effect: Wherefore we will and command all and singular Lieutenants special, Dukes, Marquesses, Earls, Viscounts, Barons, Baronets, Knights, Sheriffs, Mayors, Bailiffs, Constables, Captains, Petty Captains, Souldiers, and all other Officers, Ministers, and loving Subjects, of what estate, degree, or condition soever he or they shall be, that they and every of them with their power and servants from time to time be attendant, aiding, and assisting, counselling, helping, and at your commandment, at the due execution thereof, as they and every of them tender our pleasure, and will answer the contrary at their perils: And further, our pleasure is, that whatsoever you shall do by virtue of this our Commission and private Instructions, and according to the tenor and effect of the same, touching the execution of these premises, or any part thereof, you shall be discharged in that behalf against us, our heirs, suc-

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cessors. Yet, nevertheless, our intent and meaning is, that this our present Commission, or anything therein contained, shall not impeach or infringe the office of Earl Marshal of England, or any right or jurisdiction incident or belonging to the same. In witness whereof we have caused these our Letters to be made Patent, and to continue during our pleasure.

"May it please your most excellent Majesty, this containeth your Majesty's Commission to Thomas Earl of Arundel and Surrey, Earl Marshal of England: Whereas your Majesty doth appoint him General of your Majesty's Army, Robert Earl of Essex to be your Majesty's Lieutenant-General, and Henry Earl of Holland your Majesty's Governor of your Troops of Horse, to serve in the Army with their sundry powers and jurisdictions the said Lord General of the Army; which have been seen and approved of by your Majesty.

"And is done by Warrant under your Majesty's Signet Manual.

"GEO. BANCKES."

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## ( VI. )

*Chapter* II., *par.* 17.

LAWES AND ORDINANCES OF WARRE, FOR THE BETTER GOVERNMENT OF HIS MAJESTIES ARMY ROYALL, IN THE PRESENT EXPEDITION FOR THE NORTHERN PARTS, AND SAFETY OF THE KINGDOME, UNDER THE CONDUCT OF HIS EXCELLENCE THE RIGHT HONOURABLE THOMAS EARL OF ARUNDEL AND SURREY, EARL MARSHALL OF ENGLAND, &C., AND GENERALL OF HIS MAJESTIES FORCES.

Imprinted at Newcastle by Robert Barker, Printer to the King's Most Excellent Majestie, and by the Assignes of John Bill. 1639.

*Lawes and Ordinances of War.*

Sir Thomas Howard, Chief of the Howards, Earle of Arundel and Surrey, First Earle and Earle Marshall of England; Lord Howard, Mowbray, Brews of Gower, Fitz-Allen, Clun, Oswaldesty, Maltravers, and Graystock; Chiefe Justice, and Justice in Eyre of all His Majesties Forests, Parks, and Chaces beyond Trent; Lord

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Lieutenant of the Counties of Norfolk, Sussex, Surrey, Northumberland, Cumberland, and Westmerland; Knight of the most Noble Order of the Garter, one of His Majesties most Honorable Privie Councell in all His Majesties Kingdomes of England, Scotland, and Ireland, and Generall of all His Majesties Forces in the present expedition for the defence of this realme; To all officers of the Army, colonels, lieutenant-colonels, sergeant-majors, captains, lieuenants, ensignes, and all other officers and souldiers of horse and foot; And to all His Majesties subjects and others whom these lawes and ordinances of warre shall concern: which lawes being thus ordained and proclaimed in the Army, all the said persons respectively and severally are to swear unto; and thereafter to observe, and keep, upon the pains and penalties to the lawes and ordinances severally expressed.

*Concerning Religion and Breach of Moral Duties.*

1. Whosoever shall impiously blaspheme the Deity, or any of the blessed Persons of the Holy Trinity, and be lawfully convicted thereof, shall for the first offence make a publique acknowledgment, with detestation of his fault before the preacher of his regiment, and all others present at the time and place of divine service; and be kept three days in prison, with bread and water. The second time he shall have a red-hot iron thrust throw his tongue; and after that be ignominiously for ever turned out of the Armie.

2. The like penaltie shall they incurre, for the first and second times, who shall either do, or say ought in despite or derision of God's Word, any known or received Article of Faith, or the Ministerie of Holy Church and their office.

3. Whosoever shall be convicted for a common swearer or curser, or for a profane abuser of Holy Scripture in vain jesting or scurrilous, fashion shall forfeit such a proportion of his entertainment, and suffer besides so long imprisonment, or other punishment, as according to the quality of the person or offence the Court of War shall adjudge it to have deserved.

4. Likewise shall they be punished that profane, rob, or abuse any church, chappel, or other place of God's public worship; or any thing that is in them, or belonging to them.

5. All commanders and officers of the Army are straightly charged that in their severall regiments, quarters, and garrisons they take care that God Almighty be duly served, the Lord's Day, with other holy dayes of the Church, more reverently observed, that morning and evening prayers, with the sermons, at the appointed times be diligently frequented by themselves, their soul-

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diers, and servants, so far forth as the necessitie of the wars will permit. And that all repair to the places appointed for divine service, upon solemne worning given for it by sound of drum or trumpet.

6. And forasmuch as gaming is ofttimes the provocation unto swearing, quarrelling, neglect of military duties, with other dishonours of God Almightie, losse to the souldiers, with danger to the whole Army, all common playing at dice and cards, with other unlawful games, are utterly hereby forbidden to the souldiers, especially to the meaner sort; who, if they be convicted to offend therein, shall be first admonished, and if they leave not they shall be fined, imprisoned, or otherwise severely proceeded against, according as the offence and scandall of it shall deserve.

7. All suspitious and common women shall bee turned out of the Armie or garrison so soone as ever they shall be discovered; where if they be taken the second time, they shall be soundly whipped like common strumpets; souldiers, also, that frequent their companies shall be fined and imprisoned; and officers for the same fault shall utterly lose their places.

8. All wilfull murders, rapes, burning of houses, thefts, outrages, unnaturall abuses, with other notorious and abominable crimes, shall be punished with death.

9. Whosoever shall dishonestly touch any married or unmarried woman, women in childbed, or children, shall be cashiered, without money or pasport; or be otherwise punished as the Marshall Court shall thinke fitting.

10. Whosoever shall be drunk in camp, garrison, or quarter, shall be imprisoned and fed two whole daies with bread and water; as for common drunkards, they shall be fined and cashiered the Armie without pay or pasport.

11. Whoever being set sentinell by his officer or in his watch guard march, or other service, shall be found drunk shall dye for it.

12. Whoever in his drunkennesse shall commit any outrage or do other injurie, shall be punished both for his drunkennesse and offence according as either of them shall, in a Marshall Court, be judged to have deserved.

13. No enterprise shall be taken in hand, but the company that are to execute the same shall first commend themselves to God, and pray to Him to grant them good successe.

*Concerning the Safety of the Armie Royall of the Kingdome.*

1. Whoever, in favour of the enemy or other pretence whatsoever, shall presume to say, or secretly insinuate to any, that His

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Majesty's forces or Armie royall is unlawfull or not necessary, shall suffer as an enemy and rebell.

2. All that conspire against our Sacred Soveraigne Lord King Charles, or any of His Majesties dominions or countries, as likewise against the Lord Generall, or other generalls, governours, or commanders in the armie or garrison, or that shall goe about to betray the same, or any part or person of them, or that shall consent thereto, or conceale them, shall suffer death without mercy.

3. All such as by discourse, signe, letter, or otherwise, shall practise and entertaine intelligence with the enemy, rebells, or others in action against his Majesty, without direction from their commanders, shall be punished as traytors and rebells.

4. No man shall assist or relieve an enemy with money, victuals, munition, or other necessaries, upon paine of death without mercy.

5. Whosoever shall begin or maintaine any mutiny or unlawfull assembly in the army or garrison shall die for it.

6. Whosoever yeeldeth up any towne, fort, or other strength unto the enemie, as likewise any magazine, victuals, armes, or ammunition, or that motioneth any such matter but upon extremity, and that to the governour or in councell, shall be executed as a traitor.

7. Whosoever seeth any chiefe officer or commander of the army in the hands or danger of the enemy, shall to the uttermost of his power endevour to rescue or to fetch him off, upon paine of death.

8. Whoever in the neerenesse of the enemy shall refuse to repaire unto the army or place whither he is commanded, or that without order shall depart from them, shall be punished with death.

9. Whoever shall revolt, or run over to the enemy, or that shall attempt it, shall be punished as a traitor.

10. No man shall bewray the word unto the enemy, or shall give out a false word in time of service, upon paine of death.

11. Whosoever shall be convicted to have slept upon his watch, guard, or centry, or that shall not have given timely and sufficient warning of the coming of the enemy, shall be put to death without mercy.

12. Whoever shall disparage the actions or directions of any chiefe commander of the army, unlesse he be able to make it good, shall die for it.

### *Concerning Captains' and Souldiers' Duties in Particular.*

1. All captains, souldiers, and others shall yield their obedience to the lawfull commands of their superiours without resistance; neither shall any draw, lift, or offer to draw his weapon, speake, or

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mutter against his commanders or others correcting them orderly for their offences, upon paine of death.

2. All souldiers that wilfully, and without cause, absent themselves from their colours or company that goeth to charge or resist the enemy, shall die without mercy.

3. No captain nor officer shall defraud the souldier or other person of his pay, upon paine of losse of his place, fine, and imprisonment.

4. No captain or other officer shall make or subscribe a false muster-roll, or fraudulently give in more or other names than he hath in his troop or compamy, upon paine of fine, imprisonment, and losse of place.

5. No captain, lieutenant, or other officer that ought to be armed, shall come into any battell, skirmish, or assault, without their ordinary armes, upon paine of imprisonment; nor take upon him by word or deed to controll or hinder the sergeant-major in the execution of his office, upon paine of death.

6. No officer or souldier shall goe upon service without the word, and some other, marke to be knowne by from the enemy (especially in night services), upon paine of fine and imprisonment.

7. No captain, officer, or other, shall entertaine any other man's souldier or servant without consent or lawfull dismission from his former captaine or master, upon the penalty of a month's pay. Neither shall any souldier or servant depart from his captaine or master, without lawful cause, upon paine of imprisonment, and returning again of souldiers to their captains, and servants to their masters.

8. Captaines and officers, both of horse and foot, shall watch and ward with their troops or companies, upon paine of fine and losse of their places.

9. No souldier shall march along with the baggage but such as shall be appointed. Neither shall any march out of his array, or straggle abroad from his colours to pillage or plunder when he is appointed to watch, guard, or to other service, upon paine of imprisonment; and if they be taken in the manner they shall presently be corrected by their officers, but for the second time they shall suffer death.

10. No troop or company shall go forth on foraging or upon any designe or enterprise upon the enemie, without the particular direction of such as command in chiefe, upon paine of death.

11. No souldier shall sell, pawne, lend, lose, give, cast away, play away, or otherwise make away, his horse, armes, or furniture wherewith he is appointed to serve, nor shall suffer his horse by his default to decay, or his armes to rust, or bee broken, or spoyled,



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upon paine of imprisonment and infamie; and that both to the offender, and his abettors and receivers.

12. No private captaine shall give a passport, or licence of departure to his souldier that is able to serve, upon paine of fining and losse of his place. Neither shall any souldier depart from the Armie or garrison without a passe, upon paine of death.

13. No souldier or officer being once placed in array, either in march or battell, shall refuse to guard or defend unto his utmost the standard royall, or other cornet, ensigne, or colours, of the Armie, or shall desert, abandon, or run away from any of them, upon paine of death.

14. No souldier or others shall use any showting, noise, or clamor, or without cause discharge his piece, either in the march, quarter, or ambush, upon paine of being bastinadoed by his officer, and of imprisonment afterward.

15. No man shall give any alarme to the Armie, garrison, or quarter but upon just causes; nor shall either give it or take it in any clamourous or tumultuous manner, but shall orderly and quietly with as much speed as he may, repaire to the place of arms to answer the alarm, and to do as he shall be commanded.

16. No man shall challenge or defye another, in campe or garrison, nor shall accept of the challenge, upon paine of imprisonment and publike disarming before his companie; nor shall any, by words or injuries, provoke another to the fight or duell, or shall revenge his own injuries or provocations, upon the like penalties.

17. All brawls and quarrels betwixt souldiers shall be severely punished; and whoever in such like brawle or quarrel shall kill another, except upon extremitie and for defence of his own life he be enforced to it, shall be put to death. And he likewise that striketh his fellow souldier after they are put into array of battell.

18. Whoever shall give the lye to any person of the Army whatsoever, shall be fined and imprisoned for it at the discretion of a Marshall Court.

19. No souldier or other shall fraudulently or theevishly take anything away from any man's person, quarter, house, lodging, tent, or hurt, upon paine of death.

20. No companies of souldiers, either of horse or foot, in their marching, retreating, or enquartering in or thorow any townes or countries within the allegiance of the King, shall doe hurt, spoile, or injurie unto the persons or goods of the inhabitants, upon pain of death, or other such grievous punishment as the qualitie of the offence shall have demerited.

21. No man shall burn up any corne, hay, or forage, or other

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provisions, nor any house, barne, mill, or other building that may serve for the use of the Army, upon paine of death.

22. No souldier shall muster in two troopes or companies, or answer to two names in one company; neither shall any victualler or other that is no souldier be allowed to pass the muster for a souldier upon paine of death or imprisonment, as the Court shall find cause for it.

23. Whosoever shall set upon, or resist the commissary of the musters, or shall wrong him by word or deed in the execution of his office, shall be put to death.

24. Whatever muster-master, for hatred or for favour, shall put a lesser or a greater cheque upon an officer than his fault demerits, or any cheque at all at his own pleasure, without viewtaking, shall lose his place for it, or at least be liable to such fine or punishment as in a Court Marshall shall be adjudged.

25. No souldier having victuals or ammunition delivered to him for certain daies, shall spoile or spend them in lesse time than is appointed him, upon paine of imprisonment.

26. All captains and officers shall be diligent in training and exercising of their companies, and shall be carefull for the well disciplining and providing for them upon such paines as the Marshall Court shall think fitting.

27. Every souldier shall diligently observe and learne the distinct and different sounds of drums, fifes, and trumpets, that he may know how to answer and obey each of them in time of service.

28. Every regiment, company, and servitor either on horse or foot shall be contented with such quarter, lodging, or billet as is appointed by the quartermaster, nor shall any disturbe another in his quarter, or take it from him, upon paine of being punished as a mutinyer.

29. Whatsoever captain or other officer shall do injury to a common souldier, or to other his inferiours, upon complaint in the Marshall Court, he shall be obliged to condigne satisfaction.

### *Concerning the Camp or Garrison.*

1. Whosoever shall deale fraudulently or negligently in a trust or charge committed unto him by his camerade shall be enforced to make double restitution out of his entertainment, and be further punished by a Court of Warre, according as his offence shall have deserved.

2. After the watch is set every man shall repaire unto his own quarter, and there use such silence as his neighbours' rest be not disturbed; and all straglers found abroad after that time shall be



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imprisoned untill the cause can be examined, and order taken for their further punishment or dismission.

3. No man in campe or garrison shall lie out of his quarter, but by leave of him that commands there in chiefe, nor upon warning, or command given, shall refuse or delay to repair thither; upon such paines of fine, imprisonment, or other punishment as in a Marshall Court shall be awarded.

4. No souldier or other shall entertaine any stranger into his tent, hut, or other lodging without leave of his corporall, or other officer whom it concerneth, upon paine of imprisonment. But if he be proved to have concealed a spie, he shall suffer death for it without mercy.

5. No man shall pass in or out of the camp, or garrison, but by the ordinarie and then usuall ports, avenues, or entrances, upon paine of death.

6. All idle persons, boyes, or women which have no particular imployment for the necessarie and honest use of the souldiers, and which be not allowed, shall be banished the camp.

7. No captaine, officer, or souldier, in time of necessitie, and for defence of the Armie, shall refuse to make or repaire the walls, quarters, or other works and defences about the camp or garrison where he is commanded; Be it to work with spade, basket, wheelbarrow, or other instrument or engine then used for those purposes, upon paine of fine and imprisonment.

8. No souldier appointed to stand sentinell, to lie perdue, or to guard in such a post or place, shall come off thence till he be relieved by his officer, upon paine of death.

9. For keeping the camp as clean and healthy as may be, some places shall be assigned to kill beasts in, and for such other necessaries upon the outsides of the camp, quarter, or garrison, out of which places it shall not be lawfull to do these or other noisome or uncomely offices, upon paine of imprisonment.

10. Every Provost Marshall shall take care for the cleansing of his quarter, every third day at the least; and shall cause all garbage, carrion, filth, and other noysome offences to be buried. The refusers or neglecters he shall have power to bring to fine or imprisonment,—which punishment himself also shall be liable unto for neglect of his own duty.

11. No man shall spoile or offer violence to any merchant, victualler, suttler, or other person coming with provisions to the Army, or garrison, nor shall break open any shops or warehouses, or steale ought out of any house, tent, hutt, or other place, upon paine of death.

12. No souldier or other shall break down any house that may

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serve for the lodging or sheltering of the companie; nor shall trouble or defile any spring, well, pond, or stream of water serving for the Army, upon paine of imprisonment.

14. Whatever commissary, officer, or other appointed for levyes or musters, or for making provision of armes, ammunition, carriages, ships, or the like, for the Armie or garrison, shall be convicted to have dealt deceitfully or negligently in his charge, shall suffer such fine, imprisonment, or death, according as the crime or disservice shall have deserved.

15. No souldier, waggoner, conducter of drawing horses, or other persons having horses in the Army, shall put, or suffer their horses to be put into any corn grounds; and that upon paine of imprisonment and sufficient satisfaction to the owner.

16. No man bearing armes shall tarry above four dayes in the campe or garrison, or follow the Armie, unless he puts himself under some company, or have licence from the Generall or other then commanding in chiefe.

### *Concerning lawfull Spoiles and Prizes.*

1. After that the enemy is driven out of the field, or that the campe or towne be entered, no souldier shall leave his rank or ensigne to fall upon the spoile or pillage, till the signe be given or licence be obtained, upon paine of death.

2. Whosoever shall have taken or recovered from the enemie or rebell any lawfull spoiles or prizes above the value of ten shillings, shall presently upon his returne to the camp, make the same known to the Lord Generall, or whoever commands there in chiefe, that the prizes so taken may be recorded, and afterwards be sold in the said camp or garrison (and not elsewhere) by sound of drumme, or trumpet. And that upon forfeiture of the said prize, and such other punishment as a Councell of Warre shall thinke fitting.

3. No man having taken any spie or prisoner shall presume to keep him longer than conveniently he may certifie his captaine, or other chiefe officer. Much lesse shall he presume to let him go upon ransome or exchange, but shall deliver him to the Provost Marshall Generall, upon paine of death; and if such prisoner be a person of qualitie, the taker shall have an honourable reward for his service of the Lord Generall, or else licence of him to make the best of his prisoner.

4. No officer or souldier shall steale, spoile, or diminish any prey or booty, taken or recovered from the enemie, but shall endeavour to keep it intire, to be disposed of by the Generall, or him that commands in chiefe, upon paine of death.

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5. No man shall presume to breake, burne, or pillage any church, schoole, hospitall, or colledge; nor to tyrannise over any churchmen, schollers, or poore people, women, maides, or children, upon paine of death, or other such punishment as in a strict Councell of Warre shall be awarded.

*Concerning the Administration of Justice.*

1. That such as commit disorders may be detected, and punishment accordingly awarded, it shall bee lawfull for the Councell of Warre and the Advocate of the Army, to inquire of the actors and circumstances of offences committed, by the oathes of such and so many as they thinke convenient, and shall further use all means for examination and triall of persons dilated, suspected, or defamed.

2. All causes and controversies arising betwixt captaines and souldiers, and all others within the camp or garrison, shall be heard and discussed summarily, and execution done according to the military lawes, by the Councell of Warre without appeale, unlesse the greatness of the cause, or other circumstances, require stay or deliberation.

3. All proceeding in the Court Marshall, as well civill as criminall, shall be truely and fairely recorded.

4. If any captaine, gentleman, or souldier, declare or make his testament or last will of the goods he hath in campe or fortresse, or which hee hath got in service, as also of the debts which are owing to him, all shall be recorded in the Court Marshall, and executed by those that are named executors. If no will be made, then shall his goods descend to his wife, or next of kindred, if he have any. But if he have none, or that none comes to demand his goods within one yeare, then shall his goods be administered and distributed at the appointment of the Lord Generall, according to the lawes civill and the customes of the warres.

5. No man shall seize upon, spoile, take, or conceale the goods of any man that dyeth, or is slaine in the King's service, upon the penalty of restoring double, whensoever it shall be discovered, and further to be punished at the pleasure of the Lord Generall or Court Marshall.

6. No captaines, officers, or souldiers shall refuse to discover, apprehend, and bring forth to justice, any whom they know to be offenders, as they will answer their neglect before the Lord Generall or Councell of Warre.

7. None of the King's liege people shall conceale, receive into their service, or conveigh away, any souldiers that have runne away from their colours, but shall be oblieged to stay, discover, and

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deliver them, or assist to the delivering of them to the Provost Marshall so soon as possibly they may, and that upon paine of imprisonment or other punishment, according to the discretion of the Lord Generall or Councell of Warre.

8. The Provost Marshall Generall shall see all judgements, sentences, and commandments of the Lord Generall and Councell of Warre put in execution.

9 Every souldier and others being desired shall assist the Provost Marshall and his officers in the apprehending of malefactors, and in the execution of justice, upon paine of imprisonment. Neither shall any rescue a prisoner so apprehended, upon paine of death.

10. No man shall interrupt or trouble the Councell of Warre, or officers of justice, doing their offices; but upon request made shall be ready to assist and guard them, upon paine of fine and imprisonment.

11. No Provost Marshall shall refuse to keep a prisoner committed to his charge, nor shall dismiss him being once received, without warrant, upon paine of the like punishment that the party so dismissed or let goe should have endured.

12. Whoever shall presume to draw or present any weapon in the court of justice, or while it is sitting, shall die without mercy.

13. Whatever regiment, troope, or companie, on horse or foot, shall be found culpable in the Court Marshall for any of the matters in these ordinances mentioned, all the officers of such regiment, troope, or company, and every tenth soldier thereof, shall be punished with all severity as the nature of the offence shall require; and all other of the souldiers shall be put to doe some servile offices in the army, untill by some brave exploit they purge themselves, or otherwise be punished as the Lord Generall or the Marshall Court shall thinke fitting.

14. In whatever cases or accidents that may occurre, for which there is no speciall order set downe in the lawes here published, there the ancient course of marshall discipline shall be observed untill such time as his Excellence the Lord General shall cause some further orders to be made and published in the Armie, which shall thenceforward stand in force upon the paines therein expressed.

*The Oath.*

"I, A. B., doe sweare before the almighty and ever-living God that I will beare all faithfull allegiance to my true and undoubted soveraigne lord King Charles, who is lawful King of this iland, and

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all other his kingdoms and dominions, both by land and sea, by the lawes of God and man, and by lawful succession; and that I will most constantly and cheerfully, even to the utmost of my power and hazard of my life, constantly oppose all seditions, rebellions, conspiracies, covenants, conjurations, and treasons, whatsoever raised or set up against his royall dignity, crowne, or person, under what pretence or colour whatsoever; and if it shall come veiled under pretence of religion I hold it more abominable before God and man. And this oath I take voluntarily in the true faith of a good Christian and loyall subject, without any equivocation or mentall reservation whatsoever, from which I hold no power upon earth can absolve me in any part."

This oath is to be taken by all the officers and souldiers in the Army, by his Majesty's expresse commandment, as a touchstone of every man's fidelity and loyalty.

The forme of this following oath is to be taken by every souldier upon the reading and publishing of these orders, at which time the souldiers holding up their hand or fingers shall say, after him that readeth the oath, in these words following:—

"All these lawes and ordinances which have publikely here been read unto us we do hold and allow of as sacred and good, and will confirme, fulfill, and keep them to the uttermost of our power. So helpe us God."

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## ( VII. )

*Chapter* II., *par.* 18.

### Extract from Letter of Lord Conway, dated Newcastle, 13th July, 1640, as to the Illegality of Executing Men under Martial Law.[1]

"One thing I will tell you, and shall desire that you will speak with my Lord-Lieutenant of it; I did write to him of it, but I have not heard anything from him, so that I think that in his sickness, believing that my letter did only contain news of Scotland, he did not read it. The business is this: My Lord of Northumberland[2]

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[1] 3 Rush., p. 1199.

[2] The substance of his Commission (see vol. iii., p. 989), as given in Rushworth, bestowed powers similar to those conveyed by the Commission issued by James I. to the Mayor, &c., of Dover; *vide* Appendix III. *ante*.)

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did write to me, that having had occasion to look into the power he hath to give commissions, the lawyers and judges are all of opinion that Martial Law cannot be executed here in England, but when an enemy is really near to an army of the King's, and that it is necessary for both my Lord of Northumberland and myself do take a pardon for the man that was executed here for the mutiny. If this be so, it is all one as to break the troops, for, so soon as it shall be known, there will be no obedience; therefore put some remedy to this by all means very speedily. There are now here in prison two men for killing of men, and the Provost Marshal for letting them escape out of prison, although he took them again; I do forbear to call them to a council of war, neither dare I tell the reason why I do not, being often urged, but suffer them to think me negligent. I do not think it fit that the lawyers should deliver any opinion, for, if the soldiers do know that it is questioned, they will decide it by their disobedience, as the country doth by their ship-money, and with far more dangerous consequence, for the soldier may bring the country to reason, but who shall compel the soldier? Therefore, if it cannot be helped with a comission of *oyer* and *terminer*, which must be only in the officer or officers of the army, or in some special commission of the King's, such as he gives when noblemen are arraigned; let him then give under his own hand a Commission for the execution of Martial Law, to him that will hazard his life and estate upon the King's word. Sir Jacob Ashley hath no Commission for the execution of Martial Law; but if the fault deserve death, he is to advertise my Lord of Northumberland. This will absolutely undo all. The soldier must be punished by his officer; if it would come to debate, some may peradventure say, that for faults that deserve death the soldier may be sent to the gaol to be tried by the judges. This will take away the respect of the soldier to the officer, and there will presently be no obedience or care either in soldier or officer. I think that this doth so much concern the King in the government of the army, that if a lawyer should say so here, if I had a Commission, I would hang him, and so I think the King ought to do others."

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# ( VIII. )

*Chapter* II., *par.* 21.

## Extracts from Laws and Ordinances of Law, Established for the Better Government of the Army, by the Earl of Essex, 1642.[1]

### *Of Duties towards Superiors and Commanders.*

1. Whosoever shall use any words tending to the death of the lord general, shall be punished with death.

2. No man shall presume to quarrel with his superior officer upon pain of cashiering and arbitrary punishment, nor to strike any such, upon pain of death.

3. No soldier shall depart from his captain, nor servant from his master without licence, though he serve still in the Army, upon pain of death.

4. Every private man and soldier, upon pain of imprisonment, shall keep silence when the Army is to take lodging, or when it is marching, or in battalion, so as the officers may be heard and their commandments executed.

5. No man shall resist, draw, lift, or offer to draw or lift his weapon against any officer correcting him orderly for his offence, upon pain of death.

6. No person shall make any mutinous assemblies, or be present or assisting thereunto, or in, or by them, demand their pay, upon pain of death.

7. No man shall resist the provost marshal or any other officer in the execution of his office, or break prison, upon pain of death.

8. None shall utter any words of sedition and uproar, or mutiny, upon pain of death.

9. A heavy punishment shall be inflicted upon them, who after they have heard mutinous speeches, acquaint not their commanders with them.

10. Whosoever shall receive an injury, and shall take his own satisfaction, shall be punished by imprisonment, and as it shall be thought fit by the court-martial; but he that is injured shall be

[1] These extracts are printed from the 'Report on Military Punishments,' 1836, in the Appendix to which these articles are set out entire at p. 130.

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bound, if he do not forgive the injury, to seek reparation by complaint to his captain, or colonel, or other superior officer, and it shall be given him in ample manner.

*Of the Duties of Commanders and Officers in particular.*

1. All commanders are straightly charged to see Almighty God reverently served, and sermons and prayers duly frequented.

2. All commanders and officers that find any of discontented humours, apt to mutinise, or any swerving from direction given, or from the policy of the Army set down, shall straightway acquaint the lord general therewith, or others authorised, as they will answer their neglect.

3. Any officers that shall presume to defraud the soldiers of their pay, or any part of it, shall be cashiered.

4. No corporal, or other officer commanding the watch, shall willingly suffer a soldier to go forth to a duel or private fight, upon pain of death.

5. What officer soever shall come drunk to his guard, or shall quarrel in the quarter, or commit any disorder, shall be cashiered without mercy; and the next officer under him shall have his place, which he may pretend to be his right, and it shall not be refused to him.

6. A captain that is careless in the training and governing of his company shall be displaced of his charge.

7. All captains or officers that shall outstay their pass shall be punished at the lord general's discretion.

8. All officers, of what condition soever, shall have power to part quarrels and frays, or sudden disorders betwixt the soldiers, though it be in any other regiment or company, and to commit the disordered to prison for the present, until such officers as they belong unto are acquainted with it. And what soldier soever shall resist, disobey, or draw his sword against such an officer (although he be no officer of his regiment or company) shall be punished with death.

9. A captain or officer non-resident in the place assigned him for garrison, without licence, shall have one month's pay defaulted for the first offence, and two months for the second: upon the third offence he shall be discharged of his command.

10. After the Army is come to the general *rendezvous*, no captain shall cashier any soldier that is enrolled without special warrant of the lord general.

11. No captain of a troop shall present in the musters any but real troopers, such as are bound by their pay to follow the troops,

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upon pain of cashiering without mercy. And if any victualler, free-booter, interloper, or soldier whatsoever, of any other troop or company, shall present himself or his horse in the muster to mislead the muster-master, and to betray the service, the same shall be punished with death.

12. No provider, keeper, or officer of victual or ammunition, shall embezzle or spoil any part thereof, or give any false account to the lord general, upon pain of death.

### *Of Administration of Justice.*

1. All controversies between soldiers and their captains and all others shall be summarily heard and determined by the council of war, except the weightiness of the cause require further deliberation.

2. No provost-marshal shall refuse to keep a prisoner committed to his charge; nor dismiss him being once received, upon pain of being liable to the same punishment which should have been inflicted upon the party dismissed.

3. The goods of such as die in the Army or garrison, or be slain in the service, if they make any will by word or writing, shall be disposed of according to their will. If they make no will, then shall go to their wives or next kin. If no wife or kindred appear within a year after, shall be disposed of by the appointment of the lord general, according to the laws civil and military.

4. No magistrate of town or country shall, without licence, imprison any soldier unless for capital offences.

5. In matter of debts or trespass, or other inferior cases, the magistrate shall acquaint his captain or other chief officer therewith, who is to end the matter with the consent of the complainant, or to leave the party grieved to take his remedy by due course of law; and if the officer fail of his duty therein, the lord general, upon complaint of the party grieved, will not only see him righted, but the officer punished for his neglect in this behalf.

6. No man shall presume to use any braving or menacing words, signs, or gestures, while the court of Justice is sitting, upon pain of death.

7. No inhabitant of city, town, or country, shall presume to receive any soldier into his service, or conceal or use means to convey such runaways, but shall apprehend all such and deliver them over to the provost-marshal.

8. All captains, officers, and soldiers, shall do their endeavours to detect, apprehend, and bring to punishment all offenders, and shall assist the officers of the Army for that purpose, as they will answer their slackness in the marshal's court.

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9. All other faults, disorders, and offences not mentioned in these articles shall be punished according to the general customs and laws of war.

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## ( IX. )

*Chapter* IV., *par.* 6.

(1.) INSTRUCTIONS TO THE ATTORNEY GENERAL AS TO THE FORFEITURE OF A CONVENTICLE HOUSE FOR A GUARD HOUSE.

"*November*, 1685.

"SIR,—There being information given of a Conventicle house within the Town of Yarmouth, which His Majesty thinks fitt to be converted to the use of a Main Guard for the Regiment of Foot, now quartered there, in case the same be forfeited to His Majesty, my Lord Chancellor is pleased to order you to cause a Commission of Inquiry to be prepared and dispatched to Yarmouth for that purpose; and for the better enabling you therein, I have here enclosed a Letter from the Mayor of that Town to the Earl of Yarmouth, touching the Title that is now sett on Foot.

"I am, &c., W. B."

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(2.) LETTER REPLYING TO COMPLAINTS OF THE CONDUCT OF THE INHABITANTS TOWARDS THE SOLDIERS AT YARMOUTH.

"16 *October*, 1686.

"SIR,—I have received your two letters of the 7th and 8th inst., concerning the abuses of the townsmen of Yarmouth towards the Soldiers, and having acquainted the King with the whole matter, His Majesty has been pleased to command the Earl of Sunderland to write to the Magistrates of Yarmouth, and require them to preserve the peace, and to punish such of the Rabble that shall offer any affront to the Soldiers, as His Majesty does not doubt but you will use all possible care to prevent any abuses from the Soldiers under your command, and to punish such as may happen.

"I am, &c., W. B."

"To Sir Ro. Douglas."

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# ( X. )

*Chapter* IV., *par* 8.

## Extracts from 'Orders and Articles of Warr composed and corrected by the advice of the Duke of Albemarle, Captain-General of His Majesty's Armyes. April 9th, 1666.'

"Whereas We have taken into Our pay and entertainment several troops of guards and other regiments and companies of Soldiers, both of horse and foot, in garrison and out of garrison, for the safety of Our person and Government, and the security and peace of Our kingdom and dominions, the greatest part whereof We intended to continue no longer than the minds of Our subjects should be composed to unity and due obedience, and were, therefore, not very solicitous for the establishment of military orders for their government, whereby We fear some disorders may have been committed by some of them to the grievance and scandall of many of Our good subjects: And now that a war is declared against us by the French King, together with the States of the United Provinces, whereby We have been necessitated for the defence and safety of Our kingdoms and people to increase Our Military Leavies for the reinforcement of Our Maritime Garrisons and the supply of our Fleet, which without Military discipline will soon run into many disorders: Wherefore for the better ordering the discipline and government of all the Officers and Soldiers which now are, or hereafter shall be, in Our pay and entertainment in Our Kingdome of England, Islands of Jersey and Guernsey, dominion of Wales, and town of Berwick, Our will and pleasure is, and We do hereby straightly charge and command all such Our Officers and Soldiers, as well of Our Garrisons as others which are or shall be in Our pay, to keep and observe all the Military Orders and Articles following, on the paines and penalties therein expressed: And that they may be made more publique and known, as well to Our Officers as the common Soldier, all Colonels, Governours of Garrisons and Forts, and Captains of Troops of Horse and Companies of Foot, as well as of Our Guards as others, are to provide printed books of them, and to cause them to be distinctly and audibly read at the head of each regiment, and in every garrison, troop, or company, on every muster day, that none may be ignorant of the duties required of them."

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*Of Administration of Justice.*

1. All controversies in Our army amongst those in Our pay and entertainment, both Officers and Soldiers, shall be summarily heard and determined in Courts-marshall, except the weightiness of the cause require further deliberation.

2. And for the better administration of justice We ordain that a General Court-marshall be appointed by Our General as often as occasion shall require for the tryal of all offences committed by any of Our Commission Officers or any common Soldier where the offence is punishable to the loss of life or mutilation of member, and at every General Court the Judge Advocate shall attend, and it shall not consist of less than thirteen Officers, whereof five to be Captains at least; and when a Field Officer is to be tryed for any offence or misdeameanour, none under the degree of a Captain shall be present in Court, and at a General Court all Commission Officers, not being Staff Officers, may be present, except as before excepted.

3. We also ordain that Our General do appoint Regimental Courts for the tryal of all offences, misdeameanours, and outrages committed by Non-commission Officers and common Soldiers, not extending against life or limb, and for the tryal of all offences, outrages, and misdemeanors committed by Non-commission Officers and Soldiers of Our Horse Guards, not extending to life or limb, which are to be tryed by an equal number of Commission Officers of all Our three troops of Horse Guards. As also that he give warrants for the like Courts to be held by the Governors of Our islands of Jersey and Guernsey respectively, and by all other Our Governors of garrisons in Our realm of England, dominion of Wales, and town of Berwicke; but where there is but one company or a small number of men in a garrison, a Court shall be appointed at the discretion of Our General for the tryal of the offenders in such little garrisons by a convenient number of the Officers of the next adjacent Governors, and all offences tryable in the Court-marshall of any Governor shall be only for the offences committed by common Soldiers, not extending to life or mutilation of member.

4. We will that all sentences in our Marshall courts for pecuniary mulcts on Officers or Soldiers be forthwith signified to Our Commissary-General of Our musters, or to his deputy, or some one of his Commissaries to be signified to him, that defalcation may be made at the next muster upon the roll of such Officer or Soldier respectively, to be thereupon deducted by the Paymaster, who shall give an account, and of all other receipts of pay from time to time to Our General, that he may dispose of the same

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according to his discretion for the better relief of sick, impotent, and wounded Soldiers, and the Secretary at War shall insert this Article in all Orders for Court-marshall.

5. We ordain that the Judge-Advocate for the time being have hereby full power and authority to send for witnesses and to administer an oath to any person or witness in order to the examination or tryal of all offences, and in the absence of the Judge-Advocate We authorize the Court to administer an oath to the purposes aforesaid.

6. All Officers and others who shall send up any prisoners unto the Marshall shall likewise deliver to him the cause and reason of his imprisonment.

7. When a prisoner is in custody, information of the crime for which he stands committed is to be given to the Judge-Advocate within forty-eight hours after the commitment, and he is forthwith to acquaint Our General therewith that an Order may be issued for a Court-marshall, or else, for default of such information, within the time limited the prisoner shall be released, except good cause be shewn to the said Advocate why the information cannot be ready within that time.

8. The goods of such as dye in Our service, if they make any will by word or writing, shall be disposed of according to their will. If they make no will, then they shall go to their wives or next of kin. If no wife or kindred appear within a year after, they shall be disposed of by the appointment of Our General according to the law civil and military.

9. No magistrate of a town or county shall imprison an Officer or Soldier in Our pay, unless it be for high treason, or misprision of treason, or being accessory thereunto, or for the killing or being accessory to the death or robbery of any person not being an Officer or Soldier.

10. No man shall presume to use any braving or menacing words, signes, or gestures while a Court-marshall is sitting, upon paine of death.

11. No inhabitant of a city, town, or county, shall receive any Soldiers into his service, or conceal or use means to convey such runaways, but shall apprehend all such and deliver them to the Provost-marshall.

12. If a Marshall dismiss without authority any prisoner committed to his charge, or suffer him to make an escape, he shall be lyable to the same punishment due unto the dismissed or escaped offender, and in like manner he shall be punished that shall rescue any such and not assist the Marshall in bringing them to prison.

13. If any person or persons not being in Our pay have cause of

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action of debt or other suit against any Officer or Soldier in Our pay, and make oath thereof before the Judge-Advocate; if satisfaction and redress be not given in twenty-eight days after complaint or demand thereof, unto or in the presence of the Commission Officer in chief upon the place, shewing him his certificate of the oath made as aforesaid, he or they may sue and implead any Officer or Soldier according to Our known laws and in any of Our Courts of Record, and if any Officer or other Soldier shall do anything in opposition thereunto, he or they shall be immediately cashiered.

14. All other faults, disorders, and offences that are not mentioned in these Articles shall be punished according to the discretion of a Court-marshall, by the general custom and laws of war.

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## ( XI. )

*Chapter* IV., *par.* 10.

### Documents illustrating the Exemption of the Army from Legal Process.

(1.) "*Whitehall, 14th March*, 1669.

"Upon the humble Petition of Edmond Smith, concerning a debt of 20*l.* and upwards, alleged to be due to him by Sir Thomas Sandys:

"His Majesty is graciously pleased to refer it to his Grace the Duke of Monmouth to consider of this Petition;[1] and if his Grace finds the debt above-mentioned to be justly due from Sir Thomas Sandys to the Petitioner, to cause Sir Thomas Sandys to satisfy the same unto him, within a reasonable limited time, or otherwise to report the true state of the case to his Majesty."

(2.) And again, at a later date:—

"Sir, "*Cockpit, February 15th*, 1674-5.

"Upon the humble Petition of Sir Thomas Godfrey[2] to His Majesty, showing that about twelve years since he became bound with you in a bond of two hundred pounds, conditioned to pay one hundred pounds, which was your only proper debt. That since you neglecting to pay not only the principal, but the interest for

[1] Mis. Bk. 512, p. 8.

[2] Ib. 513, p. 8.



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many years, the Petitioner hath been sued, arrested, outlawed, and put to expenses of near fourscore pounds, and at last is forced to give security to pay one hundred and threescore pounds to get free. And yet that you keep yourself in His Majesty's Castle of Walmer in Kent as a defence against process and course of law. His Majesty having been pleased to refer that business to me, and having by former orders signified His Majesty's pleasure, that Governors, or other officers in His Majesty's garrisons, shall not thereby shelter themselves from payment of their just debts, I have thought fit to signify the same unto you, to the intent that you may either satisfy the debt aforesaid, with the said Sir Thomas Godfrey's costs and damages thereby sustained, if the same was originally your proper debt, or if you deny it to be your proper debt, that you suffer process to be executed against you, in order to a trial concerning the same, according to law.

"And so, Sir, I remain,
"Your affectionate friend,

"*For Sir Thomas Enegham,* "MONMOUTH."
*Governor of Walmer Castle.*"

(3.) Where an officer of the garrison of Portsmouth was indebted, the Governor was addressed in these terms:—

"SIR, "21*st January*, 1675.

"I send you here enclosed a Petition of Mrs. Wyan,[1] widow of Captain Wyan deceased, wherein she desires liberty, by due course of law, to serve a process against Captain Richard Richardson, in His Majesty's Regiment of Guards, whose company is now at Portsmouth; and because His Majesty does not intend that any officers be privileged by their employments from answering suits commenced against them for just debts, I desire you to communicate the matter to Captain Richardson, that he may within a convenient time, by himself or his attorney, make an appearance to answer her suit, or else that you certify me whereof he refuses it.

"I remain your very affectionate friend,

"*For Colonel George Legg,* "MONMOUTH."
*Governor of Portsmouth.*"

(4.) Should the creditor adopt legal proceedings, and the Sheriff

[1] Mis. Bk. 513, p. 104.

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venture to execute the King's writ for the arrest of the debtor without the assent of the King or the Commanding Officer, then the Secretary of State demanded from the Sheriff, not only an explanation, but that the soldier should be released, and the Sheriff's officer making the arrest punished.

Of these assertions the following entry affords the proof:—

*Letter to the Sheriffs of London about a Soldier arrested without Leave.*[1]

"GENTLEMEN, "*4th September*, 1692.

"Complaint hath been made to His Majesty that one of your Sergeants at Mace has presumed (contrary to custom) to arrest and carry one Samuel Belgrave, of His Royal Highness the Duke of York's Troop of His Majesty's Horse Guards, under Marquis Blanquefort's command, to the Counter without the consent or privity of any of his officers, who never fail (upon complaints about debts) to execute His Majesty's declared pleasure in causing the soldiers to make satisfaction, or leaving them to the law. Upon which His Majesty hath commanded me to signify to you that it may be very prejudicial to His Majesty's service, and to the public peace, if soldiers may (upon such pretensions) be put in prison without the consent of their officers, who can take others into their places when they find any shelter themselves in the Guards to avoid the payment of their debts, and that His Majesty refers it unto you to give meet redress and release unto the prisoner, and to punish the Sergeant so as to deter others from committing the like misdemeanour.

"And so remain, Gentlemen,
"Your very affectionate friend and servant,

"ARLINGTON."

"*To his very worthy friends Sir Robert Cleyton and Sir John Moore, Knights, Sheriffs of the City of London, or either of them.*"

[1] Mis. Bk. 512, p. 394.



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## ( XII. )

*Chap.* IV., *par.* 16.

### Billeting Order of Charles II.

"Charles R.,

"You are with our troop of our regiment of horse under the command of our right trusty and well-beloved cousin and counsellor, Aubrey Earl of Oxford, forthwith to march to our town of Sowold in Suffolk, and to quarter them there, and in the towns and places adjacent in some victualling houses, taverns, and ale houses, so far forth as conveniently may be; but for want of quarters enough in such houses, to quarter *them in other houses* until further order; wherein all our officers and constables whom it may concern are hereby required to be assisting unto you; and you are to be careful that your soldiers behave themselves civilly, and duly pay their quarters." [Then follows an instruction to place guards and scouts in the highways for the taking up of straggling seamen, who run away from our ships, or from the imprest masters.]

"Given at Our Court at Whitehall the 6th day of April, 1672.

"By His Majesty's command,

"Arlington."

"*To our trusted and well-beloved Sir Francis Compton, Knight, or the Officer in Chief commanding his troop at their quarters at Huntingdon.*"

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## ( XIII. )

*Chap.* IV., *par.* 18.

### Order to provide a Guard House, &c., at Ipswich.

"Charles R.,

"Trusty and well-beloved, Wee greet you well. There being a necessity for a Guard house, where the Companies of the trusty and well-beloved Colonel, Sir William Lockhart's Regiment, now quartered in our towne of Ipswich, may keep guards in their turnes,

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And the guard house being generally provided and assigned by the Magistrates of Townes where our Forces are quartered, Wee have thought fitt to signifie the same unto you, And that it is Our Will and Pleasure That you advise with the said Sir William Lockhart, or in his absence with the Officer in Chief Commanding our Forces there for the time being, concerning the place most convenient for the said guard house; And thereupon you assigne them (at the charge of the Corporation) Roomes for the Officers, and likewise for the Soldiers, for to keep guards in as aforesaid, And soe Wee bid you farewell.

"Given at Our Court at Whitehall, 9th August, 1672.

"By His Majesty's command,

"ARLINGTON."

"*To our trusty and well-beloved, our Bayliffs of Our Towne of Ipswich.*"

## ( XIV. )

*Chapter* IV., *par.* 25.

COPY OF A RECORD IN THE PUBLIC RECORD OFFICE, ENTITULED "STATE PAPERS, DOMESTIC PROCLAMATION, CHARLES II." No. 305.

"BY THE KING, A PROCLAMATION.

"For Prevention of Disorders which may be committed by Souldiers.

"CHARLES R.,

"THE King's Most Excellent Majesty having found it necessary during the present war to raise more souldiers, and to form them into regiments, and dispose of them in several quarters until there should be occasion for their service against the enemy; And being desirous that during their continuance in their Quarters no kind of rudeness or Misdemeanour should be committed by any of His Souldiers to the grievance or dissatisfaction of any of His Subjects; Hath thought fit, by advice of His Privy Council, to Publish this His Royal Proclamation, and doth hereby straightly charge and Command all and every the Officers in any Troops or Regiments that they forthwith repair unto their several and respective Quarters; and continue and abide there without presuming to depart from thence, unless His Majesties License in that behalf

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under His Royal Sign Manual shall be first had and obtained. And His Majesties further Pleasure and express Command is, That all Officers and Souldiers do take strict Care that no Violence or Injury be offered to any of His Majesties Subjects, either in their Persons or Estates, Nor any kind of Disorder committed or suffered within the several Quarters; And for the better prevention of all abuses of this kind, His Majesty doth hereby require all and every His loving subjects, when, and as often as they shall receive any kind of injury or abuse from any of the Souldiers under His Majesties Pay, forthwith to make their complaints unto the Officer, or Officers, under whom such Souldiers shall serve, which officer upon such complaint made shall immediately relieve the complaint, or otherwise, wherein the case shall so require, deliver up the Offender to the Civil Magistrate, to be proceeded against according to Law: And if upon such Complaint made, the complainants shall not find a present satisfaction and redress, or a delivery of the Offender as aforesaid, That then they cause Information thereof to be given to some Justice of the Peace, who shall take the same upon Oath, and certifie it unto one of His Majesties Principal Secretaries of State, to the end the same may be brought before His Majesty, who will graciously vouchsafe to hear the matter himself, And not onely give the Petitioner a full and ample relief, But likewise severely punish the Officer who shall be found to have been negligent in his Duty, or shall suffer any just Complaint to pass without a due and timely redress. And it is His Majesties Pleasure, That this Proclamation be set up, and remain affixed in all Market Towns within this Kingdom.

"Given at Our Court at Whitehall, the Fourth day of December, in the Four and Twentieth Year of Our Reign, 1672.

"God save the King."

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## ( XV. )

*Chapter* IV., *par.* 46.

### Royal Warrant and Orders thereunder for Discharging all Popish Recusants from the Army in 1678.

(1.) "Charles R.,

"Most deare and most intirely beloved sonn, wee greet you well. Wee have thought fitt, and doe hereby signifie unto you our will

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and pleasure, That you forthwith give order for the displaceing and turning out of their respective Imployments, not onely out of our Guards of Horse and Foot, but also out of other our established Land Forces, as well Regiments as not Regiments in this our Kingdome, and in our Isles of Guernsey and Jersey, and Towne of Berwick-upon-Tweed, respectively, all and every such Officers and Soldiers as are Popish Recusants, or have not returned such Certifficates as the Law requires of such Officers and Soldiers within the time limited for the same. And soe we bid you most heartily farewell.

Order about turning out Romish Recusants.

"Given at our Court at Whitehall, the 1st day of November, 1678.

"By His Majesty's command,

"J. WILLIAMSON."

"*To our most deare and all intirely beloved son,*
*James Duke of Monmouth, Capt.-Gen., &c.*"

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(2.) "JAMES, DUKE OF MONMOUTH, &C.

"In pursuance of His Majesty's Pleasure and Commands, signified to mee by his letter beareing date the first day of this instant, November, You are hereby required (notwithstanding any former orders) not to muster any Officer or Soldier that is a Popish Recusant, or that hath not returned such Certificates as the Law requires of such Officers and soldiers within the time limited for the same; and this order you are to observe, not only in the mustering of His Majesty's Guards of Horse and Foot, but also of all other His Majesty's Established Land Forces, as well Regimentes as not Regimentes within the Kingdome of England, the Towne of Berwick-upon-Tweed, and the Isles of Jersey and Guernsey, respectively.

"Given under my hand the 2nd day of November, 1678.

"*To Henry Howard, Esq., and Sir Cecil Howard,*
*Knight, Commissaries Generall of the Forces.*"[1]

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[1] Fifty similar letters were sent to officers commanding regiments or companies —vide Miscell. Bk., 515, p. 80, et seqq.

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# ( XVI. )

*Chapter* IV., *par.* 59.

## Extract from the Rules, Orders, and Instructions for the future Government of the Office of Ordnance,[1] Anno Regni 35 Car. II. Regis. 25 July, 1683.

A Royal Warrant under Royal Sign Manual of Charles R., countersigned by Sir L. Jenkins, confirmed these rules, with this preface and in these terms :—

"Right trusty and well-beloved commander [George Lord Dartmouth], We greet you well. Whereas we have taken into Our princely consideration and care the great consequence and necessity of preserving the state of Our artillery, munition, arms, and of all other the habiliments and equipage belonging to the magazine royal, within the office of Our Ordnance, which hath heretofore, with much providence and wisdom of Our predecessors, been instituted, endowed, and supported, as a member highly importing the safety and defence of Our dominions, as well by sea as land. We have therefore thought it requisite and necessary, for the better conservation of Our said office, and for the good of Our service therein, that Instructions should be forthwith drawn for the government of the office of Our Ordnance, under Our Master-General thereof, expressing as well the particular and proper duties of each principal officer severally, as the common duties of them jointly, in the general management of Our said office, with the duties likewise of each inferior officer, minister, and attendant thereunto belonging. And forasmuch as you have, in obedience to Our commands, presented to us a book containing the following rules and instructions for Our allowance, We, having taken the same into Our consideration, have thought fit to approve, ratify, and confirm the same, and do hereby declare Our will and pleasure to be that the said Instructions be and remain the established Rules for the future government of the Ordnance. And Our Will and Pleasure further is, and We do hereby strictly charge and require you to govern yourself and Our office and officers under you,

[1] From the Earl of Devonshire's Case, 11 Cok. Rep. 90 *a*, the office of Master of the Ordnance appears to have been newly created by Letters Patent of 35 Henry VIII., when Thomas Lord Seymour was appointed Master.

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according to the literal sense and true intent and meaning of the said Instructions. And if any of Our principal officers shall misdemean themselves in the just execution of these instructions, either in their respective duties or in their common actings, to Our damage or disservice, or in neglect or disobedience to you in the discharge of their duty to Us, then and in such cases you are to suspend any of the said principal officers so offending, and to acquaint Us therewith, and the nature of the offence, that Our will and pleasure may be further signified for removal or final deprivation of his or their employment, if We shall so see cause or think fit."

The Warrant then provides the Master-General with a "salary out of the ordinary of Our office," and it also settles all the salaries, allowances, and wages that are in like manner to be paid out of the Quarter Books.

The Rules and Instructions relate (1) to the government of the Ordnance under the Master-General,[1] committed to a Board of five principal officers, and (2) "for the inferior Officers under the chief Officers, which are Under Ministers, and attendants or tradesmen, and artificers."

A description is given of the duties of each Officer, and of each inferior Minister, from which these extracts are taken:—

The *Lieut.-General*[2] *of the Ordnance*[1] (in the absence of the Master) was "to receive all letters, warrants, orders, &c., and impart them to the principal officers for execution. To keep a Minute Book, or Journal thereof; to consider (with the Board) all estimates or demands of money for stores, fortifications, or any other service, and to see that the estimates and contracts thereupon drawn be such as might be for the good of the service. To take care that the train of artillery in the Tower be fitted for motion upon any occasion, and that other marching trains in any Magazines in England be kept in good condition. To direct and oversee the practice of the Master Gunners, Firemasters, Gunners, and Fireworkers, and to acquaint the Master of the Ordnance therewith. To give directions in writing under his hand for the shooting off of great Ordnance at the Tower upon extraordinary occasions. To see that all Officers, inferior Ministers, &c., did their duty."

The *Surveyor-General*[1] was "to survey all Stores and pro-

[1] It was held, in 1742, that an officer in the Army could accept either of these offices without vacating his seat, under the 6 Anne, 33 H. D. (O.S.) 1169; but not that of Surveyor-General.—*Q.* 8-8455, 'Army and Navy Expenditure, 1849,' p. 608.

[2] This office, and that of Clerk of the Deliveries, were abolished subsequently to 1828, and in consequence of the recommendations of the Finance Committee of that year.—*Ibid.*

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visions of war in the charge of Our Storekeeper. To see the several species of Stores distinguished and placed for their preservation. To take care that all Labourers, Artificers, and Workmen, be strictly kept to their labours and duties, and not to suffer any person (without cheque) to be absent, or loyter, or to make bad or slight work, or to misemploy, waste, or embezzle any stuff or stores. To see that the person appointed Clerk of the Cheque do keep a particular account of the dayly and weekly work. To survey, and make proof of all Ordnance, Powder, Small Arms, and all other emptions and provisions of war, and not to suffer any Stores to be received in which are not good and serviceable, and also duly proved and marked with Our mark. To peruse and allow all Bills demanding payment of moneys for goods delivered into Our Stores, or for works and services done, and to allow only those under his hand that are agreeable to warrants, contracts, or receipts. By himself, or some of his sworn clerks (by him appointed) to assist at the taking of all Accompts and Remains, and to survey all Stores, of what nature or kind soever, returned into Our Magazines from any of Our Ships, Castles, Forts, Captains, Gunners, or any other person or persons to whom the same were formerly issued before Our Storekeeper, be chargeable therewith, and distinguish the good and serviceable from the repairable, and the repairable from the utterly unserviceable. When any Works, Buildings, or Repairs in and about Our Fortifications, or for other Our services are to be undertaken, to compute and calculate the charge thereof, and carefully to examine that they be well and sufficiently done, whether undertaken by the great, daywork, or upon any other contract or agreement, and when finished to measure and certifie the same. To keep two Counter or Cheque Books, by way of Journal and Leidger of the Receipts, Issues, Returns, and Remains of all Our Stores of what nature soever chargeable upon or accountable for by Our Storekeeper, in the same method and manner as is by Us enjoyned and prescribed to be kept by our Storekeeper."

The *Clerk of the Ordnance* was "to keep a Book of all orders and instructions given for the government of the office, and to record all patents and grants, and the names of all Officers, Clerks, Artificers, Attendants, Gunners, and others, who enjoy the said grants, or any fees for the same. To keep a Journal Book of the entries of all Warrants and Orders for services to be done, provisions to be made, or supplies to be sent, and all directions and significations thereupon given, and to keep the originals thereof for the justification of the office, and discharge of the Storekeepers. To draw all estimates for provisions to any of Our Ships, Forts, Castles, or Garrisons, or for any other Our services to be undertaken in and by Our said office,

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and to register the said estimates and letters under Our Privy Seal thereupon, and to keep entries of all Warrants and Orders from the Treasury. To draw and indite all Letters, Instructions, Commissions, Deputations, Contracts, or Bargains, and other writings agreed upon by the Master-General and Board, and to keep thereof particular records. Likewise to make out Warrants to be signed by himself and the Surveyor to the several Artificers for provisions ordered upon the several estimates and contracts thereupon by them undertaken, to enter the Warrants in a Leidger, and to draw Bonds for performance of covenants. To assist at the taking the Remains of any of Our Ships, Castles, Forts, and Garrisons, and to make Certificates upon the Accompts of the Commanders, Captains, and Gunners thereof, examining and comparing the said Accompts by balancing the charge and expense thereof, computed both in specie and value. To make Debentures for all Provisions and Stores of War bought and brought into Our magazines, and for Freight, Land, and Sea Services, and other incident charges, upon Bills allowed of by the Surveyor, pursuant to Warrants, Orders, and Significations, to draw all Bills of Imprests for Moneys ordered to be advanced, and to enter the same in his Book of Imprests. To vacate all Bills of Imprest made for advance of Moneys, by making a memorandum on the margin of the debenture, to be passed for satisfaction of the said Contracts, Agreements, Undertakings, or other Services when performed, that Our Treasurer of the Ordnance may take notice how much is to be by him defalked thereout and recharged. To attend at the receipt of all Stores, and make Indorsements upon the Orders, Bills, or Warrants directing the bringing in of the same, and to enter the same in his Journal of his Receipts, that so the Keeper of Our Stores may be duly charged therewith. To attend at the Returns of all Stores formerly issued, and to examine the Bills of Lading that specify the Returns so made, and to note the times when, the persons from whom, and the places from whence returned, that so Our Storekeeper may be recharged therewith. To keep annual Leidgers of the Receipts, Issues, and Returns of all Our Stores, as well at Our Tower of London as at Woolwich, Tilbury, Sheerness, Chatham, Portsmouth, Plymouth, Hull, or elsewhere, deduced from the Journals or monthly abstracts of the respective Storekeepers of Our said Magazines, to serve as a Cheque or controul of their Accompt. To keep a like annual Leidger of all Moneys, Talleys, and Orders received by the Treasurer of Our Ordnance, as likewise of all Moneys by him paid upon Debentures, Bills of Imprests, or Quarter Books, duly vouched and listed to remain in the office for a controllment of the Treasurer's Accompts. To make Quarter Books of the Salaries, Wages, and

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Allowances due to the several Officers, as Clerks, Artificers, Labourers, and Gunners. To draw Lists for the payment of such Quarter Books and Debentures as he shall judge necessary and convenient to be paid. To draw quarterly a state of the Debts of the Office, both ordinary and extraordinary, as well what passed into Debentures as growing due upon Bills and Contracts to be presented to the Master of Our Ordnance within ten days at farthest after the determination of each Quarter."

The *Storekeeper* was "to take care of all the Ordnance, Munition, and Stores committed to his charge, and to indent and put in such ample and legal security for the safe keeping thereof, and for making true and annual account for the same. To receive no Stores whatsoever into Our Magazines so as to be charged therewith upon Accompt, without Warrant in writing, signed by Our Surveyor and Clerk of Our Ordnance; nor until they have been first surveyed by the Surveyor, proved by the Proofmasters, or one of them, and marked with the Crown mark. To issue or deliver none of the Stores under his charge without a Warrant or Proportion in writing agreed upon by Our principal Officers, and signed under the hands of three or more of them grounded upon Warrant under Our Royal Signet and Sign Manual, or Order of Our Council, or of Our Lord High Admiral of England, or Lords Commissioners of Our Admiralty for the time being, for matters concerning Our Navy and sea affairs, together with the Signification of the Master-General of our Ordnance for the time being thereupon. To produce monthly or oftener, at the Board, all such Proportions as have been signed by Our principal Officers for the issuing of any Stores or Provisions of War to be compared at the Board with the Indents taken by Our Clerk of the Deliveries, that so Our Storekeeper may not have credit allowed him for more than what shall appear to have been really and actually issued. To receive back into Our Storehouses no Provisions formerly issued to any Officer, Captain, Gunner, Workman, or other, without the same be first duly resurveyed by Our Surveyor, or some of his sworn Clerks. To represent to the Master-General and Board the several defects and wants of reparations and accommodations of Our Storehouses. To keep a Journal dayly, and duly to record all Receipts, Issues, and Returns of Our Provisions, and all the wastes, losses, lendings, and embezzlements whatsoever. To make an annual Accompt, deduced into Leidgers, from the said Journal, of all Receipts, Issues, and Returns of all Our Stores and Provisions of War under his charge." (Which said Accounts or Ledgers were to be in the method and manner set out in detail on the Instructions.) "By which method the Office may at pleasure be readily satisfied what is or ought to be the state of any Species

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under the Storekeeper's charge, what hath thereout been issued, and for what Services, all distinguished as aforesaid with the value of each respectively, and of the whole; which being added to the Receipts and Issues of all other Provisions thus monthly accounted for by the other subordinate Storekeepers, will show, firstly, the true state and value of the Stores in every one of the Magazines, distinctly and altogether; secondly, the total of the annual expense."

The *Clerk of the Deliveries* was "to draw all Proportions for delivery of any of Our Stores of War, in pursuance of any Warrant under Our Royal Signet and Sign Manual, or order of Our Privy Council, *or of Our Lord High Admiral, or Lords Commissioners of Our Admiralty*, together with Our Master of Our Ordnance, his signification, or in his absence the order of the Office Board thereupon, and to keep two books: one, of the copies of all Warrants and Orders for the Proportion or Delivery; the other, a Journal of the Proportions themselves or Deliveries, of which he is to take and keep the Indentures and other security of the Deliveries, vouched under the hands of the respective Receivers or Accomptants, whether Governors, Colonels, Captains, Gunners, or any other persons thereunto appointed, whereby a true charge may be given to any Receiver, or Accomptant when thereunto called or required; and the said Journal he is to deliver to the Clerk of Our Ordnance, to be by him or one of his sworn Clerks posted into a Leidger, as in his Instructions he is particularly directed. To be present at all Deliveries of Stores, and to assist in taking of Remains, and upon the next Proportion or Supply drawing to charge the Remains with the new supply upon the respective Ship, Fort, Castle, or Garrison, or upon the particular person into whose custody they shall be received. To produce monthly or oftener, at the Board, the Indents for any Deliveries of Stores, to be compared with Our Storekeeper's Proportions, and to serve as a cheque upon his Accounts."

In addition to the undivided duties that related to each separate officer, others—common duties—of the principal officers, as a Board, were laid down.[1]

The Board were "to observe, follow, and see performed all orders, warrants, and significations of the Master of Our Ordnance, whether grounded upon warrants from Us, Our Privy Council, *or Lord High Admiral of England (for Sea Affairs), and in all things to obey him, jointly or severally, in their respective places, as Master-General of Ordnance, and such directions as from time to time he should judge fit and necessary to give for Our service.*"

[1] The duties of the Treasurer are fully set out, but I have not thought it necessary to give them.

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Upon the expenditure of Stores and lessening of the Magazine by occasion of any Services, they were "to assemble and consider of the want thereof, and to cause a Proportion of what should be needful to be drawn up by the Clerk of the Deliveries, to be estimated for by the Clerk of Our Ordnance, and the said Proportion so estimated signed under their hands, or the major part of them, they were to deliver to the Master-General, to be by him presented to the King, the Privy Council, or Lord High Treasurer or Lord Commissioners of Our Treasury for the time. Upon due order for authorising such Proportion and Estimate, the principal Officers were to call before them such persons as they should know to have any of the said Provisions, and not to suffer the serving in thereof to be engrossed by any man to the prejudice of the Service, upon pretence of any Office or Grant intended for the advancement of the same, but to bargain freely with the ablest and fittest Artificers or Merchants, and such as will be ready and willing to serve Us in every kind the best Stuff and the best Cheap, which Agreement and Bargaining was to be made by the major part of the principal Officers, and recorded by the Clerk of the Ordnance." Various other particular duties are enumerated, and they are then enjoined "to take especial care that none of Our Provisions of what kind soever be used or employed by themselves to their own uses, or to the use of any other person, but be wholly kept and used for Our immediate Service. They are likewise to take especial care that no Ammunition or Stores of what nature or kind soever, be delivered, lent, sold, or otherwise issued to any person or persons out of Our Magazines without particular Warrant in writing under our Sign Manual, or Order of Our Council, or Letter of Our Lord High Admiral, or Lords Commissioners of Our Admiralty, for the time being (if it concern Sea Affairs), or Signification from the Master-General of Our Ordnance, thereupon; and further to see that Indents between the parties to whom the said Ammunitions, Provisions, or Stores are to be delivered, lent, sold, or otherwise issued, or other caution be taken to testify the delivery, sale, loan, or issue thereof, whereby such parties as receive the same may be called to answer."

The authority of the Master-General was at all times supreme, but as a Board their decisions were to be by majority of voices. "By the allowance, direction, and signification of the Master of Our Ordnance in all matters of weight, and in all causes, by common advice and consent of most voices, and especially by following the literal prescripts of their Warrants, to do and perform all the necessary Services of Our said Office within their respective charges."

Lastly, the sale of Offices was prohibited. "And whereas the selling of the Clerks' Places under Our principal Officers hath been, and

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must necessarily (if continued) be the cause of many great mischiefs to Our Service, We strictly command and declare that no principal Officer hereafter presume to sell any Clerk's Place, and that the Clerks of Our several principal Officers being of great trust to the end that they may not be overburthened or discouraged in their duty."

The Instructions for the Inferior Officers—under the Chief Officers—which are Under Ministers, and Attendants, or Tradesmen, and Artificers follow these.

Under Ministers were either to attend the officers as their clerks, or the office, as the—"(*a*) Deputy Keeper of the Armoury; (*b*) Keeper of the Small Gun Office; (*c*) Storekeepers; (*d*) Engineers; (*e*) Master Gunner; (*f*) Master Firemaster; (*g*) Proofmasters; (*h*) Waggon Master; (*i*) Clerk of the Cheque; (*j*) Purveyor; (*k*) Messenger; (*l*) Labourers, Gunners, &c.

The *Clerks* were to attend the officers, and to write their books fairly and with diligence, and to obey the orders of the Master-General and Board. They were to take no gratuities, and to give despatch to all Tradesmen, Artificers, &c., dealing with the Office.

The *Deputy Keeper of the Armoury* was to take into his care and charge all the defensive Arms and Armour in the Tower of London, and give security to the Crown for the safe keeping thereof. To keep the same cleaned, oiled, and fit for use. To receive no Armour or Equipage till proved and marked, nor without due notice to the Clerk of the Ordnance that the Deputy Keeper might be duly charged therewith. To issue out no Armour or Equipage without warrant signed by three of the Board officers. To keep Journals and Ledgers of all receipts and issues, and yearly to render an account to the Board for examination by the Auditors of Imprest.

The *Keeper of Small Arms* was to give security, upon his entering office, for his faithful conductt herein. His duties as to the custody, receipt, and issue of Small Arms were similar to those before described of the Deputy Keeper of the Armoury with regard to Arms, Armour, &c.

The *Storekeepers* of Outposts and Magazines were to take into their charge "all such Guns, Gunners' Stores, Powder, Match, Shot, and other Habiliments of War whatsoever, as shall be either sent from the Office of the Ordnance for a supply of Our said Magazines, or returned from any of Our Ships, Forts, Castles, or Garrisons upon any Remains taken by direction of the Master-General, or principal Officers of Our Ordnance, and the same safely to keep and to indent and give in sufficient security for so doing, and likewise for rendering a true and just account, from time to time, of all Receipts,

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Issues, and Returns of Stores under their several charges, in the method and form hereafter required.

"To send up to the Office of Our Ordnance monthly abstracts of the daily Receipts, Returns, and Issues that shall be made of all manner of Stores, and in the last column of the said Abstracts of Issues to set down the remaining state of the Stores at the month's end, for the satisfaction of the Master-General of Our Ordnance and the Board of Our said Office in the examination of the Leidgers to be by them kept and sent up to Our said Office every three months. To keep three Journals; one for Receipts, one for Returns, and one for Issues, and a Leidger wherein to post the said Receipts, Issues, and Returns from the said Journals; which Leidger of Stores duly and fully posted, cast up and stated, distinguishing the good and serviceable from the repairable and unserviceable, with the days of the month when all such Stores were received and returned, and from whom, as also the days of the month when such Stores were issued, and to whom and by what Warrant, they are every one of them respectively charged to send up at the end of every quarter of a year to the Board of Our said Office, to be compared with the monthly Abstracts of their Journals, for the better clearing of their Accounts. Not to deliver out or issue any of our Stores of what nature soever under their charge without a Proportion signed by three of our principal Officers, at the least, grounded either upon Warrant from Us, Our Privy Council, or Letter of Our Lord Admiral, or Lords Commissioners of Our Admiralty, for the time being, and the Master-General of Our Ordnance's signification thereupon."

They were to give the Master-General an account of the Stores and Storehouses, but not to employ workmen for their repair without a previous estimate and order for the same. They were not to employ any extraordinary labour, or lay out money without previous sanction, and then to render a monthly Account thereof to the Master-General.

The *Principal Engineer*[1] was "to be well-skilled in all the parts of the Mathematicks, more particularly in Stereometry, Altemetry, and Geodœsia. To take Distances, Heights, Depths, Surveys of Land, Measures of solid Bodies, and to cut any part of ground to a proportion given; to be well skilled in all manner of Foundations

[1] By Letters Patent of 1st April, in the thirteenth year of his reign, Charles II. appointed Sir Bernard de Gomme Chief or Principal Engineer of all garrisons, forts, &c., with a fee of 13*s.* 4*d.* by the day, payable out of the Exchequer. He was to keep an exact account of all "engines and other works" made, and of all moneys spent, and all Governors, Captains, and officers within the Realm were to give him their best help.—MS. Book $\frac{q}{1}$ (1602-1669), p. 157.

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in the Scantlings of all Timber and Stone, and of their several natures, and to be perfect in Architecture, civil and military, and to have always by him the descriptions or models of all manner of Engines useful in Fortifications or Sieges, to draw and design the situation of any place, in their due Prospects, Uprights, and Perspective; to know exactly the rates of all materials for building of Fortifications, thereby to judge of any Estimates proposed to him to examine. To keep perfect draughts of every the Fortifications, Forts, and Fortresses of Our Kingdoms, their situation, figure, and profile, and to know the importance of every one of them, where their strength or weakness lies, whether the lines be drawn to a due length, or the chief angles truly formed.

"To make Plots or Models of all manner of Fortifications, both Forts or Camps, commanded by Us to be erected for Our Service, and thereof to make the Propositions and to draw Estimates of the charge, to be considered of by the Master-General of our Ordnance and principal Officers thereof, and to be presented to Us for Our approbation. He is likewise to represent to the Master-General of Our Ordnance, or principal Officers thereof, the materials requisite and necessary to be therein used and employed, and to see that the same be good and fit for Our Service, and to cause his Assistant, or Master Workman under him, to instruct the Workmen employed how to use and handle with advantage their Shovels, Spades, Mattocks, Wheelbarrows, &c., and how to gain time in working. To see likewise that the Overseer, or Clerk of the Cheque for the Fortifications, look unto the Tools and Materials, and take care that they be preserved, and that what are broken be forthwith repaired and amended, if so it may be; and as soon as the Work is done to cause them all to be returned into our Magazines, and to take care that they keep an Account not only of the Workmen, but also of the money paid them for their wages. To inspect the Fortifications, and report thereon; to provide good and able Engineers, Conductors, and work bases. In time of action, or when it is intended to lay siege against any place, to take a careful view thereof, and to direct the breaking of the ground, planting of Batteries, making of Platforms, &c.; and to *leave* such Engineers or Conductors as will see them carried on and executed. To be constantly moving from one attack to another, to see that all possible expedition be made, and so to divide the Engineers under him, that they may relieve one another, and never to suffer (as far as his authority extends) any single Person to be wholly entrusted with a Work or an Attack, without he be well assured of his ability and capacity to undertake and discharge such a Service."

The *Inferior Engineers* were "to endeavour the improvement of



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their knowledge in all things belonging to an Engineer, and to render themselves capable in all respects for Our Service, by attaining to the skill of several particulars mentioned in the first Article of the Instructions of the duty of Our Chief Engineer. To observe and obey the directions of Our Chief Engineer in all things relating to Our Service, either at home or abroad, as far as Our said Chief Engineer shall be by Us empowered or commissioned by the Master-General of Our Ordnance to act."

The *Master Gunner* of England[1] was "to teach the Under Gunners in the exercise of shooting great Ordnance, Mortar Pieces, &c., once a month in winter, and twice in summer. To certify the ability of Gunners, or Scholars, as qualified for Service. To keep a Register of all the Gunners, of their profession, and of their places of abode, that so quarterly musters may be made."

The *Firemaster* was to exercise once or twice a week those that he had under his command with a great and small Mortar Piece, to cast Stones, Bombs, and Grenadoes filled with sand, at several distances, and to keep them continually at work in the Laboratory, to make unfilled paper rockets, to prepare saltpetre, brimstone, and powder for Service, to make all manner of covering of filled fire-balls, with lines, or cords, to show them how to fill, fit, and apply a petard for several occasions and of several sorts. To keep his Laboratory in a neat and good order, and to see that every night the Laboratory, when there is work, be sprinkled with water and swept, that no dust may remain on the floor, working-tables, or shelves.

The *Proofmasters*, "with the oversight of Our Surveyor-General, or other Our principal Officers," were "to make Proof of all Ordnance, Ammunition, and Arms defensive or offensive, and to cause the Crown *Mark* to be set only upon such as endure the full Proof, and to expect wages and reward only by the merit of their Service, and to take nothing from the Deliverers of the Provisions, Arms, or Stores, upon pain both of losing their Places, and receiving such further ignominy and punishment as the inconveniency that may grow by their corruption shall deserve. That one or both of them do sign, under the principal Officers of Our Ordnance present at any Proof, the Certificate or Report of the

[1] By Warrant of Privy Seal (20th May, twenty-ninth of his reign), Charles II. appointed Captain Richard Leake "Our Master Gunner, as well within Our Town of London as within Our kingdom of England and elsewhere," for life, with the wages or fee of 2*s.* a-day, payable out of the Exchequer. From the original entries in the MS. Book ℔, referred to in the last note, many of the Gunners held Patent offices for life.—MS. Warrants (1670-1688), p. 24.

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respective Proofs by them made, and of the particulars of the Arms, Stores, and Provisions marked by them before the said Certificate or Report of any Proof be entered or registered in the Office-Books for the better manifestation of their own duties, and discharge of the trust of Our principal Officers concerned in the said Proofs." And it was also ordered "that no Proof of any Ordnance, Arms, Powder, or other Ammunition and Stores whatsoever, be proved by the said Proofmasters, without appointment and direction of the Master-General of Our Ordnance, or principal Officers of the same, injoyning the time, place, and manner of the said Proofs."

The *Wagonmaster* to the Office of the Ordnance was "to take the charge, care, and oversight, as well of the Wagons and Carriages for the necessary Service of Us, Our Royal Consort, and the Officers of Our Court attending us in Our several progresses, as for the use of Our Office of the Ordnance and train of Artillery, and to provide that they be kept in good repair."

The *Clerk of the Cheque* "of the Works, Workmen and Labourers in the Tower of London, upon account of the Office of Our Ordnance" was "to see the Workmen and Labourers daily employed in the necessary works of the Office; to give their due attendance, and to keep a Cheque Roll of all such as loyter or absent from their duties, and to cause such as are present to answer to his call, which he was to make four times a-day (that is to say) at their coming on to work and going off in the morning, and at the like times in the afternoon." He was likewise "to keep a List of all such as were hired to labour, and to see that they, as well as the ordinary Labourers, came to work early, and to set down the time when they set on, and how long they continued, and to admit none to be employed but such as shall be ordered by the Office, or by Our Surveyor thought needful to be employed.

"With the assistance of one of Our Surveyor's sworn Clerks, to take a view of and to keep a daily Accompt of all such materials and provisions as by any Artificer, whether Master Smith, Master Carpenter, Cooper, Bricklayer, or Plaisterer, Mason, or others employed in the day's work of the Office, and to have a regard that no Artificer, Workman, or Labourer be entered for longer time than they did Service. To take strict notice of every cart that brings in Provisions and Stores upon the King's Accompt, as likewise of every cart that carries any Stores out, and to set down or tally the several turns, and to note upon what particular Services the said carts were employed, and from what places they came, and to what places they go.

"To render a weekly Account into the Office in two distinct Books; one for the Surveyor, the other for the Clerk of the



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Ordnance, of all and every the Services before-mentioned, setting down the names of the several persons employed, the time of their being upon Duty and Service, the several Materials and Provisions by any of the Artificers aforesaid brought in or employed either in the buildings, reparations, or other day's work of the Office, that so the Book given in to the Clerk of the Ordnance may every Saturday be viewed and signed by Our principal Officers (whereof the Surveyor and Clerk of Our Ordnance be always two."

The *Purveyor* "to the Office of Our Ordnance" was "to observe and follow the orders and directions that he shall from time to time receive from our Master General of our Ordnance, or principal Officers of the same, in the taking up and providing such *ships*, *vessels*, *lighters*, and *boats*, as Our affairs in Our said Office shall require, and to bring the Owners or Masters thereof to the Board of Our said Office, there to contract at the reasonablest rates." To see that no delay be made by the Master in taking in his cargo, and to prevent demurrage; and when Stores were shipped to Foreign Stations to take charge and see the ship sail, so that it should make no stop or stay till arrival at its destination.

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AN ESTABLISHMENT OF THE ANNUAL PAYMENTS AND ALLOWANCES TO BE MADE UPON THE QUARTER BOOKS OF THE OFFICE OF OUR ORDNANCE.

| | Per Annum. |
|---|---|
| To the Master-General of Our Ordnance for the time being .. .. .. .. .. .. | £1500 |
| To the Principal Officers of Our Ordnance— | |
| The Lieutenant-General .. .. .. .. | 800 |
| The Surveyor .. .. .. .. .. | 400 |
| The Clerk of Our Ordnance .. .. .. | 400 |
| The Storekeeper[1] .. .. .. .. .. | 400 |
| Clerk of the Deliveries .. .. .. .. | 300 |
| Treasurer of Our Ordnance .. .. .. | 500 |
| Secretary or Chief Clerk to the Master of Our Ordnance for himself and Under Clerks .. | 200 |

*Attendants on the principal Officers of Our Ordnance.*

| | |
|---|---|
| To the Lieutenant— | |
| 1st Clerk .. .. .. .. .. .. | £60 |
| Another Clerk .. .. .. .. .. | 40 |

[1] "Note that these salaries are given in full of all wages, allowances, demands, and pretences whatsoever upon the Quarter Books of the said Office of Our said Ordnance."

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| | Per Annum. |
|---|---|
| To the Surveyor— | |
| 1st Clerk .. .. .. .. .. .. | £60 |
| 2nd Clerk .. .. .. .. .. .. | 60 |
| 3rd Clerk .. .. .. .. .. .. | 40 |
| To the Clerk— | |
| 1st Clerk .. .. .. .. .. .. | 75 |
| 2nd Clerk .. .. .. .. .. .. | 65 |
| 3rd Clerk .. .. .. .. .. .. | 50 |
| 4th Clerk .. .. .. .. .. .. | 50 |
| To the Storekeeper— | |
| 1st Clerk .. .. .. .. .. .. | 60 |
| 2nd Clerk .. .. .. .. .. .. | 60 |
| 3rd Clerk .. .. .. .. .. .. | 60 |
| To the Clerk of the Deliveries— | |
| 1st Clerk .. .. .. .. .. .. | 60 |
| 2nd Clerk .. .. .. .. .. .. | 50 |
| Clerks to the Treasurer of Our Ordnance— | |
| 1st Clerk .. .. .. .. .. .. | 60 |
| 2nd Clerk .. .. .. .. .. .. | 60 |
| 3rd Clerk .. .. .. .. .. .. | 50 |
| Deputy Keeper of the Armoury .. .. .. .. | 60 |
| Armourers, 3 each, at 26*l.* .. .. .. .. | 78 |
| Armourer at Whitehall .. .. .. .. .. | 20 |
| Keeper of the Small Guns .. .. .. .. | 80 |
| Furbisher at the Small Gun Office .. .. .. | 30 |
| Storekeeper at Chatham .. .. .. .. .. | 120 |
| Storekeeper at Upnor Castle .. .. .. .. | 80 |
| Storekeeper at Sheerness .. .. .. .. .. | 80 |
| Storekeeper at Tilbury .. .. .. .. .. | 100 |
| Storekeeper at Woolwich .. .. .. .. .. | 40 |
| Storekeeper at Windsor .. .. .. .. .. | 50 |
| Storekeeper at Portsmouth .. .. .. .. | 120 |
| Furbisher at Portsmouth .. .. .. .. .. | 40 |
| Storekeeper at Plymouth .. .. .. .. .. | 40 |
| Storekeeper at Hull .. .. .. .. .. | 40 |
| Storekeeper at Berwick .. .. .. .. .. | 30 |
| Storekeeper at St. James's Park .. .. .. .. | 20 |

*Under Ministers.*

| | |
|---|---|
| Principal Engineer .. .. .. .. .. .. | £300 |
| Second Engineer .. .. .. .. .. .. | 250 |
| Third Engineer .. .. .. .. .. .. | 150 |

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| | Per Annum. £ | s. |
|---|---|---|
| Two ordinary Engineers, or young men, to be bred up in the art and knowledge of Fortification, &c. .. .. .. .. | 200 | 0 |
| The Master Gunner of England .. .. .. | 190 | 0 |
| His 3 Mates, each at 45*l.* 10*s.* per annum .. | 136 | 10 |
| Sixty Gunners each, at 1*s.* per diem .. .. | 1095 | 0 |
| Firemaster .. .. .. .. .. .. | 150 | 0 |
| His Mate .. .. .. .. .. .. | 80 | 0 |
| Four Freworkers, or Petardiers, at 40*l.* each .. | 160 | 0 |
| Proofmasters, two each at 20*l.* .. .. .. | 40 | 0 |
| Wagonmaster .. .. .. .. .. | 100 | 0 |
| Clerk of the Cheque .. .. .. .. .. | 60 | 0 |
| Purveyor .. .. .. .. .. .. | 40 | 0 |
| Messenger .. .. .. .. .. .. | 60 | 0 |
| Labourers, 44 each at 26*l.* .. .. .. .. | 1144 | 0 |

## ( XVII. )

*Chapter* IV., *par.* 48.

### Warrant as to Sale of Officers' Commissions, and the Deduction of Poundage therefrom for Chelsea Hospital.

"Charles R.

"Whereas out of Our great care for the maintenance of such as have, or shall have served in Our Land forces, We have given order for the building and finishing a Royal Hospital, and it being also reasonable that such Officers as receive Our Commissions should contribute to so good and charitable a work, Our Will and Pleasure is that when any Governor of Our Forts or Garrisons, or any Commission Officer of Our Land Forces shall obtain leave from Us to surrender his Commission, Command, or employment, and that at his humble request We shall grant the same to any other, That in such case the person so surrendering his Command shall pay twelve pence out of every twenty shillings that shall be given him in case of such surrender, And that the person likewise to whom the said surrender shall be made shall also pay twelve pence for every twenty shillings given to the person so surrendering as aforesaid; and to the end a true account may be had of the money so appointed by Us to be reserved for the use of Our said Hospital, We

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do further direct that no Commission be issued out of the Office of either of Our principal Secretaries of State to any Governor or Officer of Our said Forts, Garrisons, or Land Forces, without a Certificate first had from the Paymaster-General of Our Forces that such persons so surrendering to whose behoof such surrender is made, shall have each of them duly satisfied the said reservation of twelve pence out of every twenty shillings, or given sufficient security for payment of the same to Our said Paymaster for the use of Our said Royal Hospital. And we do further charge and command the said Paymaster of Our Forces to take care, upon the application of such person as aforesaid, that such certificate be duly given, as soon as they shall appear to have complied with Our Will and Pleasure.

"Given at Our Court at Newmarket, the 7th day of March, $168\frac{3}{4}$, in the 36th year of Our Reign.

"By His Majesty's Command."

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## ( XVIII. )

*Chapter* IV., *par.* 49.

### Warrant for Deduction of Poundage for Support of Chelsea Hospital.

"Charles R.

"Having out of Our Royal disposition towards the relief of old maimed soldiers thought fit to erect an Hospital for their support, and being graciously inclined by all fitting means to direct a further supply towards the perfecting and maintenance thereof, Our Will and Pleasure is that one day's pay be drawn and deducted from Our Guards and Garrisons every year, and two days every leap year, towards the building of Our Royal Hospital, and maintenance of such soldiers as, having served Us by land, shall be provided for therein; and of these Our directions the Paymaster and Commissary-General of Our forces, and all other persons whom it may concern, are to take notice, and to govern themselves accordingly, for which this shall be their sufficient Warrant.

"Given at Our Court at Windsor, the 17th day of June, 1684, in the 36th year of Our Reign.

"By His Majesty's Command."

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## ( XIX. )

*Chapter* IV., *par.* 50.

### Order for Military Establishments to be approved by the Treasury and Secretary of State.

"Charles R.

"Our Will and Pleasure is that the Establishment of our Troops of Guards, Regiments, and Garrisons, as now signed by Us, with all other Officers and other Charges therein mentioned, be continued, and that nothing be offered to Us for Our signature for alteration thereof but what shall be first approved by Our Commissioners of our Treasury for the time being, and one of Our two principal Secretaries of State, to whom we have referred the care and consideration thereof.

"Given at Our Court at Whitehall, the 21st day of January, 166$\frac{8}{9}$, in the 21st year of Our Reign.

"By His Majesty's Command.

"Arlington."

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## ( XX. )

*Chapter* IV., *par.* 51.

### Account of Office Disbursements of Secretary at War in 1673.

"Delivered into y$^{e}$ Office belonging to Mathew Locke, Esq., His Majesty's Secretary at Warre, from y$^{e}$ 25th of March, 1673, to y$^{e}$ 10th of December following:—

| | £ | s. | d. |
|---|---|---|---|
| 3 Best penknifes .. .. .. .. .. | 0 | 6 | 0 |
| 1 Bagg of pounce .. .. .. .. .. | 0 | 1 | 0 |
| 300 of large Dutch quills .. .. .. .. | 0 | 9 | 0 |
| 1 Duble bottle of inke .. .. .. .. | 0 | 2 | 8 |
| 1 Book 2 qrs. of medyam ruld in vell. .. .. | 0 | 8 | 0 |
| 3 Reames of Joly post .. .. .. .. | 2 | 8 | 0 |
| 2 Quires of Dutch medyam .. .. .. .. | 0 | 6 | 0 |
| | 4 | 0 | 8 |

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| | £ | s. | d. |
|---|---|---|---|
| Brought forward .. .. | 4 | 0 | 8 |
| 2 Best penknifes .. .. .. .. .. | 0 | 4 | 0 |
| 3 Reames of Joly post .. .. .. .. | 2 | 8 | 0 |
| 1 Dousin of y^e^ largest pencells .. .. .. | 0 | 12 | 0 |
| 3 Hundred of large Dutch quills .. .. .. | 0 | 9 | 0 |
| 1 Duble bottle of inke .. .. .. .. | 0 | 2 | 8 |
| 4 Reames of Joly post .. .. .. .. | 3 | 4 | 0 |
| 1 Duble bottle of inke .. .. .. .. | 0 | 2 | 8 |
| 400 of Dutch quills .. .. .. .. .. | 0 | 12 | 0 |
| 1 Bagg of sand .. .. .. .. .. | 0 | 1 | 0 |
| ½ a pound of the best vermilion .. .. .. | 0 | 4 | 0 |
| 6 Rullers .. .. .. .. .. .. | 0 | 2 | 0 |
| 2 Best penknifes .. .. .. .. .. | 0 | 4 | 0 |
| 1 Box and a thousand of wafers .. .. .. | 0 | 2 | 0 |
| 9 Quire of the best demy .. .. .. .. | 0 | 18 | 0 |
| 1 Hone .. .. .. .. .. .. .. | 0 | 3 | 6 |
| 1 Penknife blad fitted in a haft .. .. .. | 0 | 1 | 8 |
| 1 Duble bottle of inke .. .. .. .. | 0 | 2 | 8 |
| 300 of large Dutch quills .. .. .. .. | 0 | 9 | 0 |
| 2 Sand boxes .. .. .. .. .. .. | 0 | 1 | 0 |
| 2 Inke glases .. .. .. .. .. .. | 0 | 0 | 8 |
| 1 Quire of superoyall .. .. .. .. .. | 0 | 4 | 6 |
| | 14 | 9 | 0 |

p. ARTHUR TOOKER.

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# ( XXI. )

*Chapter* IV., *par.* 64.

## EXTRACT FROM PARLIAMENT ROLL (1 HENRY IV., VOL. III., P. 420 *b*) AS TO THE MARSHALL'S COURT.

ITEM, quamvis statutum fuerit et ordinatum, ac etiam hactenus confirmatum, "Quod nullus liber homo capiatur, &c., nec quod aliquo modo destruatur; nec quod Rex super eum ibit, nec super eum mittet, nisi per legale judicium parium suorum, vel per legem terræ:" tamen de voluntate, mandato, et ordinatione dicti Regis, quamplures ligeorum suorum maliciose accusati, super eo quod debuissent aliquid dixisse publice vel occulte quod cedere poterit ad

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vituperium, scandalum, seu dedecus personæ dicti Regis, fuerant capti et imprisonati, et ducti coram Constabulario et Marescallo Angliæ in Curia Militari. In qua Curia dicti ligei accusati ad aliud responsum admitti non poterant nisi respondendo se in nullo fore culpabiles, et per eorum corpora et non aliter se justificarent et defenderent: non obstante quod accusatores et appellatores eorum essent juvenes fortes et sani, et illi accusati senes et impotentes, mutilati vel infirmi: unde non solum destructio Dominorum et Magnatum Regni, sed etiam omnium et singularum personarum communitatis ejusdem Regni verisimiliter sequi posset. Cum igitur Rex prædictus hujusmodi Regni sui Statuto voluntarie contravenerit, non est dubium quin proinde perjurium incurrebat.

*Translation.*

Also, although it hath been established and ordained, and moreover hitherto confirmed, "That no free man be taken, &c., nor in anywise destroyed; nor that the King shall proceed against him, nor send against him, except by the lawful judgment of his Peers or by the law of the land:" yet by the will, mandate, and ordinance of the said King, many of his lieges, maliciously accused for that they had said something publicly or secretly which might tend to the abuse, scandal, or disparagement of the person of the said King, had been taken and imprisoned, and carried before the Constable and Marshal of England in Court-martial. In which Court the said accused lieges could not be admitted to make other answer than the answer that they were in nowise guilty, and would justify and defend themselves by their bodies, and not otherwise: notwithstanding that their accusers and appellants were strong and healthy youths, and the persons accused old and impotent, disabled, and infirm; whereupon the destruction not only of the Lords and Magnates of the realm, but also of all and every person of the commonalty might in all probability ensue. Whereas, therefore, the aforesaid King hath willingly contravened such statute of his said kingdom, there is no doubt that therein he did incur perjury.

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# ( XXII. )

*Chapter* IV., *par.* 71.

## Warrant of James II. for holding a Court-martial,[1] under the Articles of War, for the better Government of His Majesty's Land Forces during the Rebellion of Monmouth.

"James R.

"Whereas, We have received information that divers persons having listed themselves into Our Army, and received Our pay, have nevertheless deserted Our Service, and otherwise misbehaved themselves in contempt and violation of the Rules and Articles of Warr, declared by Us for the better government of Our Forces. Our Will and Pleasure is, that there be a generall Court-Martiall held on this occasion, which is to consist of all the Field Officers of Our First and Second Regiments of Foot Guards; of the Regiment of Prince George, Hereditary Prince of Denmark; of Our Royall Regiment of Foot; and of Our Regiment of Horse, under the command of Our trusty and well-beloved Sir John Lanier, Knt. As also of six Captains of each of Our First and Second Regiments of Foot Guards; of two Captains of Our Royall Regiment of Foot; of two Captains of Prince George, Hereditary Prince of Denmark's Regiment; and of two Captains of Our said Regiment of Horse; who are to be appointed by the respective Colonells or Officers in Chiefe commanding Our said Regiments, or any of the Troops or Companies of Our said Regiments, within or near Our City of London; any five of them, with two Field-Officers and the President, are to be a Quorum. And We do hereby appoint Our right trusty and right well-beloved Cousin and Councellor William Earle of Craven, Lieutenant Generall of Our Forces, to be President of the said Court-Martiall. And you are to order the Marshalls of Our said Regiments respectively to summon the said Field-Officers and Captains who are to be of the said Court-Martiall. And to give notice to the said William Earle of Craven as President thereof. And likewise to the persons in whose custody the delinquents now are or shall

[1] The Court-martial Books held by the War Office commence with an entry under the date of the 22 Feb. 168⅔; but this is the first entry in the reign of James II., p. 15.

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remain, when and where the said Court-Martiall is to be held; the said Marshalls being directed to obey your orders, and to give their attendance where it shall be requisite. And We do hereby authorise and require the said generall Court-Martiall to hear and examin the severall matters that shall be brought before them touching any soldier's having deserted his colours or Our Service, and all other crimes and misdemeanors whatsoever relating to Our said Service, together with the delinquents and such wittnesses as shall be able to give testimony concerning them, whom you are therefore hereby impowered to summon in order thereunto. And after full examination and hearing of the said matters and persons, the said Generall Court-Martiall is hereby authorised and directed to give judgment and sentence therein, according to the said Rules and Articles of Warr, declared and appointed by Us for the better government of Our Land Forces in pay, and according to military discipline, or such other orders as We have given in matters of like nature. Which Sentence the said Court-Martiall is hereby authorised and required to cause to be *put in execution according to the Rules and Methods of Warr.* For all which this shall be to them and you a sufficient Warrant respectively.

"Given, &c., at Whitehall, the 10th day of July, 1685, in the First year, &c.

"By His Majesty's Command,

"SUNDERLAND."

"*To Our Trusty and Well-beloved George Clarke, Esq., Judge-Advocate of Our Forces, or his Deputy.*"

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## ( XXIII. )

*Chapter* IV., *par.* 71.

### THE PROCEEDINGS OF ONE OF THE COURTS-MARTIAL HELD UNDER THE ABOVE WARRANT.

"AT a Generall Court-Martiall held in the Great Room at the Horse Guard at Whitehall, on Monday, the 20th of July, 1685, for the hearing and examining informations against severall persons who have misbehaved themselves in contempt and violation of the Rules and Articles of Warr declared by His Majesty for the better government of His Forces with power, after full examination and

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hearing of the said matters and persons, to give judgment and sentence therein according to the said Articles of Warr, and according to military discipline or such other orders as His Majesty has given in cases of like nature, with authority to cause the same to be put in execution according to the Rules and Methods of Warr, by vertue of His Majesty's Warrant of the 10th of July, 1685.

"The Right Honourable WILLIAM EARLE OF CRAVEN,
Lieutenant-General of His Majesty's Forces.—*President.*

Sir John Lanier, Lieut-Coll. Sackville } *Brigadiers.*
Lieut-Coll. Strode, Major Eyton } *Of the First Regiment of Guards.*
Major Huitson, *Of the Second Regiment of Guards.*
Major Douglas, *Of the Royall Regiment of Foot.*

Capt. Tufton, Capt. Barclay, Capt. Stradling, Capt. Delavall, Capt. Skelton, Capt. Beresby } *Of the First Regiment of Guards.*
Capt. Miller, Capt. Kendall, Capt. Pope } *Of the Second Regiment of Guards.*
Capt. Lowder, Capt. Murray } *Of the Royall Regiment.*

"This Court having heard the evidence brought against Peter Teat and Peter Innes of Captain Balford's Regiment, together with the defence made by them, upon full examination, do find that the said Peter Teat and Peter Innes are guilty of the breach of the Seventh Article of the *Rules and Articles* for the better government of His Majesty's Land Forces in pay *during the present Rebellion*, viz.:—

"'No Officer or Soldier shall use any traiterous words against the Sacred Person of the King's Most Excellent Majestie upon pain of death.'

"And do accordingly order that the said Peter Teat and Peter Innes be hanged by the neck till their bodies are dead, on Friday the 24th of this instant July, 1685, between the hours of nine and twelve in the morning, at the head of the three Scotch Regiments in the Camp.

"That Donnald Rosse is guilty of the breach of the 14th Article, viz., 'No Soldier or Officer shall utter any wordes tending to sedetion or mutiny, upon pain of suffering such punishment as shall be inflicted by a Court-Martiall.'

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"In pursuance whereof, this Court does order that the said Donald Rosse shall receive thirty-nine stripes on the bare back, standing under the gallows with a rope about his neck, at the head of the three Scotch Regiments in the Camp, on Friday the 24th of this instant July, and be forthwith cashiered.

"That John Friburn and James Thompson, of Captain Cuningham's Company, are not guilty of what they are accused. And that the Officer in whose custody they are do let them at liberty, together with John Darling of Captain Balford's Company, and John Metcolt, Thomas Binne, Gaven Ferguson, David Kuilly, and William Blaith, of Captain Hamilton's Company, against whom no accusation has been brought.

"CRAVEN."

Two other Courts appear to have been held under the same Warrant, but the proceedings are not of sufficient interest to make any other mention of.

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## ( XXIV. )

*Chapter* IV., *par.* 71.

### LETTER FROM SECRETARY AT WAR AS TO TRIAL OF OFFENDERS BY THE COMMON LAW, THE OPERATION OF THE ARTICLES OF WAR HAVING CEASED.

"To COL. KIRKE, "*Whitehall*, 21 *July*, 1685.

"SIR,—I have received His Majesty's Pleasure upon the particulars mentioned in your letter, concerning plundering and murder by Soldiers in pay, and I am ordered to signify this general direction,—That in all cases where any difference arises between a Soldier and any person not in His Majesty's pay, the decision be left to the Common Law, which is to be done in all matters where any person not in pay shall be concerned; and that in all cases whatsoever, where the punishment is to be loss of life or limb, the Trial of any offender in His Majesty's pay be left to the Common Statute Law, the Articles of War being only to take place during the Rebellion which has now ceased.

"I am, &c., "W. B."

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## ( XXV. )

*Chapter* IV., *par.* 72.

### Circular Letter to Officers that are Parliament Men.

"Sir, "*Whitehall, 3rd Nov.*, 1685.

"His Majesty has commanded me to signify to you, H. P., that you faile not to give your attendance in the House of Commons as soon as possible.

"W. B."

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## ( XXVI. )

*Chapter* V., *par.* 1.

### Orders by Peers of the Realm to Re-assemble all the Protestant Officers and Soldiers disbanded by Lord Faversham.

(1.) "We, the Peers of this Realm assembled, with some of the Privy Councill, being informed that many Officers with the Regiment of Scotts Guards, Colonel Worehop's and Colonel Bocham's Regiment of Foot, have dismissed the Soldiers under their commands, do hereby direct and require you to gett all the Protestant Officers and Soldiers so dismissed from the said Three Regiments together again, and to keep them in good order, to which end the Earl of Ranelagh, Paymaster-Generall of the Army, hath directions to see them duly and constantly payd their subsistence money upon Certificate from the Commissary General of the Musters, his Deputy or Deputys, of their being returned to their respective Companys, whereof all the Protestant Officers and Soldiers of the said Regiments are required to take notice, and to conform themselves by returning accordingly. And all Justices of the Peace, Constables, and others concerned, are required to take notice thereof, and to be

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assisting in providing quarters, and otherwise, as there shall be occasion.

"Given, 13 December, 1688.

"HALIFAX, DORSETT, AILESBURY,
"ANGLESEY, CARLISLE, NEWPORT,
"NORTH AND GREY, T. JERMIN,
"T. TILNY."

"*To Lieut.-Gen. Douglass, or the Officer in Chief with the Regiments above-mentioned.*"

(2.) *Chap.* V., *par.* 3.

"WE, &c., do hereby authorise and require you to pay one week's subsistence to such of the Forces as are together in Town.

"Given, 13th Dec., 1688.

"HALIFAX, KENT, AILESBURY,
"ROCHESTER, MOUNTAGUE, PRESTON,
"T. JERMIN, LUCAS, P. WINCHESTER.
"NORTH AND GREY, J. TREVOR,
"J. TILNY."

"*To Viscount of Ranelagh.*"

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## ( XXVII. )

*Chapter* V., *par.* 2.

ORDERS FOR, AND PAPERS RELATING TO THE DISBANDMENT OF IRISH ROMAN CATHOLIC REGIMENTS, AND MARCHING THEM TO THE ISLE OF WIGHT FOR EMBARCATION TO IRELAND.

(1.) "WE do hereby direct and require you, with the assistance of such other Officers as you shall think fitt, forthwith to take under your command two Detachments of the Regiment lately commanded by Sir John Talbot, Knight, and another detachment of the Regiment of Horse, late of Sir John Fenwick, Baronet, and with them to repair to East Grinsted, Lewis, and Chichester; where you are to cause the Regiments whereof John Butler, Anthony Hamilton, and Roger Mac Elligott, Esqrs., are Colonels, to lay down their arms, which are either to be deposited in the hands of the Chief Magis-

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trates of those places, or to be sent by you under a guard to the Garrison of Portsmouth; and the Officers and Soldiers of the said Regiments being first disarmed, you are to cause them to march with the Irish Guards now at Lewis, to Portsmouth, from whence you are to take care that they be transferred to the Isle of Wight, under a Guard of four Companys of Foot of the said Garrison of Portsmouth, and delivered over to Sir Robert Holms or the Officer in Chief Commanding there, who is to take such care for their safe custody and forth-coming as We have directed in that behalf; and you are to give such directions for the subsistance of the said Regiment in their march and transportation, as you shall find requisite, and to be accomptable for such sums of money as you shall receive from the Paymaster-Generall of the Forces for the carrying on of this Service.

"Given at St. James's, the 31st day of December, 1688.

"*To John Beaumont, Esq., Colonel of the Princess Ann of Denmark's Regiment of Foot.*"

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## (2.) Order for the Governor of the Isle of Wight to Prepare for their Reception.

"Trusty and well-beloved, We greet you well: Whereas, we have thought fitt to cause such of the Irish Forces as are Roman Catholicks, to lay down their arms, and ordered them to march to Portsmouth, and from thence to be transported to the Isle of Wight, where they are to remain under a sufficient guard, and to be forth-coming when there shall be occasion, We do hereby give you notice thereof, willing and requiring you to cause such place or places to be prepared for their reception within the said Isle, and such provision of Victualls and other things to be gott ready as shall be necessary for their subsistance and entertainment for one fortnight at least from their arrivall according to the number contained in the paper hereunto annexed. And for so doing this shall be your Warrant.

"Given at St. James's, this 31st of December, 1688.

"*To Our Trusty and Well-beloved, Sir Robert Holmes, Knight, Governor of the Isle of Wight, or the Officer in Chief Commanding there.*"

"Computation of the numbers of Irish to be transported to the Isle of Wight:—



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| | |
|---|---|
| "Of Colonel Butler's Regiment of Dragoons .. .. | 300 |
| Of the Foot Guards and Colonel Anthony Hamilton's Regiment .. .. .. .. .. .. | 600 |
| Of Colonel Mac Elligott's Regiment .. .. .. | 600 |
| | 1500" |

(3.) ROUTE FOR THEIR MARCH TO PORTSMOUTH.

"WE do hereby direct and require you to cause all the Roman Catholick Officers and Soldiers of the Regiment of Foot under your command, to march (according to the Route hereunto annexed) to Portsmouth, where they are to remain untill further order, and that you receive into the said Regiment all the Protestant Officers and Soldiers of the Irish Guards, Colonel Hamilton's Regiment, and Colonel Mac Elligott's Regiment of Foot.

"Given at St. James's, the 31st of December, 1688."

"*To Lord Forbes.*"

(4.) ORDER TO THE GOVERNOR OF PORTSMOUTH TO RECEIVE THEM.

"WE do hereby direct and require you to admit into the Garrison of Portsmouth, Colonel Butler's Regiment of Dragoons, the Irish Guards, Colonel Mac Elligott's and Colonel Hamilton's Regiments, to be transferred thence to the Isle of Wight, at such times as Colonel Beaumont shall think fitt, and to cause four Companys of that Garrison to repair at the same time to the Isle of Wight, where they are to remain for the Guard of the said Regiments, and to follow such directions as they shall receive from Our trusty and well-beloved Sir Robert Holms, Knight, or the Officer in Chief Commanding there.

"Given at St. James's, this 31st December, 1688."

"*To the Commander-in-Chief at Portsmouth.*"

(5.) MEMORANDUM FOR COLONEL BEAUMONT.

"IT is the Prince of Orange's pleasure, that Colonel Beaumont do order all the horses belonging to the Dragoons of Colonel

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Butler's Regiment, to be left in the custody of the Chief Magistrates or Constables of the places where they are now quartered, untill further order. And that he take an accompt of what is due in the Quarters of the Irish Forces, and give Bills upon the Paymaster here, if the Creditors shall desire it, or otherwise to give them debentures to be taken up from them, you sending down the money to those places, which he may assure them shall be done with all speed. "W. B."

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(6.) EXTRACT OF A LETTER TO MR. PEPYS, DATED WHITEHALL, 31ST DECEMBER, 1688.

" . . . . But there is another Business which presses more, which the Prince of Orange has ordered me to acquaint you with, that is, the transporting of fifteen hundred Irish from Portsmouth to the Isle of Wight, wherein your care and directions to my Lord Dartmouth or otherwise, are desired; His Highness having ordered those men to be at Portsmouth within four or five days, and not to stay there longer than shall be necessary for the getting their passage to the Isle of Wight, where they will come under the command and custody of Sir Robert Holms.

"I am, &c.,

"W. B."

"*To Mr. Pepys.*"

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(7.) ORDER TO THE GOVERNOR OF THE ISLE OF WIGHT TO RECEIVE THEM.

"WE do hereby direct and require you to admit into the Isle of Wight the several Roman Catholick Officers and Soldiers of the Lord Forbes's late Regiment of Foot, and to give such Order concerning their Quartering and subsistance there, as you shall find requisite.

"Given at St. James's, the 18th day of January, 168⅞."

"*To Sir Robert Holms, Knight,*

"*Governor of the Isle of Wight, &c., &c.*"



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(8.) LETTER TO SIR ROBERT HOLMS FROM SECRETARY AT WAR, AS TO THE SAFE CUSTODY OF THE IRISH IN THE ISLE OF WIGHT.

"SIR, "*Whitehall, 10th January*, 168⅞.

"I have laid before his Highness your letter to Monsieur Huggens of the 4th instant, concerning the Irish; and his Highness does approve of your putting them into Carisbrook Castle and the town of Newport as soon as you shall receive bedding sufficient for them; for the providing of which I have, by his Highness's orders, written this day to the officers of the Ordnance; in the mean time his Highness thinks fit that they be disposed of in such manner as you shall find most proper and convenient, wherein you are the best judge, as well as for placing the arms of the Militia as shall be safest, though it is not very probable that those disarmed men should, under a guard of four companies of Foot, of eighty men in each, become unruly, or attempt anything against the Island.

"You cannot expect that the Quartermaster of these Irish Regiments should be usefull to you, since they are no longer in the forme of Regiments, but in the nature of Prisoners.

"What you propose for the shipping to lye near the Isle of Wight to hinder the Irish from stealing away, his Highness seems to approve of, and orders me to send the proposall to Mr. Pepys, that it may be put in execution; and for your further satisfaction, directions are given for a troop of Dragoons to march to Lymington, where they will be in five or six days, and expect your orders for their passage into the Island and their duty there.

"I cannot tell when this trouble of guarding the Irish will be over with you; but I imagine it will not last much above a fortnight, so that the People of the Island have the less reason to be dissatisfyed with their guests; and in the mean time I will take the best care I can that their subsistance be duly furnished to them, which is all you represent as necessary on this occasion.

"W. B."

*Memorandum.*

A letter, dated 10th January, 168⅞, to the officers of the Ordnance to know what ammunition and beds are in the Tower or at Portsmouth, in order to sending a sufficient quantity for the Irish in the Isle of Wight.

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(9.) ORDER TO THE PAYMASTER-GENERAL OF THE FORCES TO ISSUE SUBSISTENCE MONEY.

"WE do hereby direct and require you to cause the Subsistance money due to the Irish Officers and Soldiers now in the Isle of Wight, to be payd from time to time to Sir Robert Holms, Knight, Governor of the sayd Island, during their stay there. And for so doing this, together with the Acquittance of the sayd Sir Robert Holms, or his Assign, shall be your Warrant and discharge.

"Given at St. James's, the 20th January, 168⅞."

"*To Richard, Earl of Ranelagh,*
"*Paymaster-General of the Forces.*"

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## ( XXVIII. )

*Chapter* V., *par.* 3.

LETTER FROM THE PRINCE OF ORANGE TO EARL OF CRAVEN, APPRISING HIM OF THE PRINCE'S INTENDED ARRIVAL AT WHITEHALL, AND FOR THE REMOVAL OF THE KING'S GUARD.

"MY LORD, "*Windsor*, 15*th Dec.*, 1688.

"I am very well satisfyed with your Lordships care in Preserving the Publick Peace, and cannot doubt of your continuance of it in every thing that may be requisite for my service. At present I think fitt to acquaint you with my Resolution to come to London on Tuesday next, so that it will be necessary that the forces now there be removed the day before to such Quarters as are appointed them; and as I have in their stead ordered 3000 of my Guards of Foot to march thither, so as to be there on Monday, together with Eight hundred of my Guards of Horse, you are to give such Orders that they may be placed before my arrivall in the Quarters formerly taken up by the English Guards. I intend, likewise, to send on the same day, the English Brigade consisting of three thousand men to Southwark, the Tower, Tower Hamletts, and places adjacent, for the quartering of which it will be requisite that you direct the necessary Preparations to be made in such manner as may be most convenient for my Service, and ease of the Inhabitants. For the better effecting whereof I have informed the Lord Churchill more particularly of my intentions; to whom I do therefore refer

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you for his assistance, as there shall be occasion. And so I bid you farewell,

"Your most affectionate friend,

"W. H. P. d'O."

"*To Earl of Craven.*"

## ( XXIX. )

*Chapter* V., *par.* 3.

### General Order by the Prince of Orange for Re-assembling of the Army.

"Whereas upon our calling together the Forces, We have appointed such Officers to command them, in whom we may repose entire trust and confidence, as well for their readiness and inclination for Our Service, as for their care and diligence in keeping the said Forces in good order and discipline; and having, out of the tender regard and favourable consideration which we shall always express for the good service and dutifull behaviour of the Forces, taken care for their maintenance and encouragement, and given orders for the satisfying and making good to every Officer and Soldier their full Pay and arrears due to them untill the first day of this instant January, and for the making constant and punctual payment of the subsistance money, and clearings of the Army in the usual method without any the least diminution of the former Pay; We have thought fitt hereby to declare the same that no Officer or Soldier may be arrested or diverted from our Service by any groundless reports or malicious insinuations, strictly charging and requiring all Officers to repair forthwith to their respective Commands, and all Soldiers to their respective Quarters and places of Rendezvous, upon pain of our highest displeasure, and being punished for their default as the nature of their offences shall deserve. And if it shall so happen that, notwithstanding these our gracious Intentions and offer of Pardon for their first absence or Desertion, any Soldiers shall obstinately continue to absent themselves from their duties, We do hereby direct and require all Officers, Civill and Military, to seize and apprehend, and to be aiding and assisting in the seizing and apprehending of all Soldiers that have deserted or shall desert the Service, in Order to the bringing them to condign Punishment, to be inflicted upon them with the utmost severity.

"Given at St. James's the 19th day of January, 168¾.

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"It is his Highness's Pleasure that this Order be forthwith printed and published, and that the Colonels or Commanders-in-Chief do cause the same to be read at the head of their respective Regiments, Troops, or Companies; as also that all Officers concerned in the Arrears or Clearings mentioned in the said Order, do bring or send in their Muster-rolls relating thereunto, closed by the Commissary to the Office of the Pay-Master Generall of the Forces within ten days after the date of the said Order at furthest; And that for the future all rolls be returned closed to the Office of the Commissary-Generall of the Muster within seven days after the respective musters, under the penalty to each Captain failing therein of forfeiting the Pay due unto him upon such Rolls as shall not be so closed, the said forfeiture to be appropriated to the use of the Royall Hospitall."

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## ( XXX. )

*Chapter* V., *par* 23.

REPORT OF THE LAW OFFICERS[1]—THAT THE ACT OF SETTLEMENT DID NOT PROHIBIT THE ENLISTMENT OF FOREIGN SOLDIERS.

"*Case.*

(1). "An Alien did voluntarily inlist himself, and hath serv'd some years as a Soldier, now demands to be discharged from His Majesty's Service. (Qy.) Whether his Officer is by Law obliged to grant such Alien a discharge?"

(2). "SIR, "13*th March*, 1753.

"We should have answered your Quere relating to the Foreign Soldier long ago, but our difficulty arose from not being able to see whence the doubt proceeded. On apprehension that there must be probably some Act of Parliament which you had in view, which we could not recollect, we have been searching, but in vain. I must beg the favour of knowing whether there was anything particular that gave occasion to the question.

"I am, with great respect,
Your most obedient, &c.,
"D. RYDER."

"*Right Hon. H. Fox.*"

[1] Bk. 721, p. 105.

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(3). "SIR, "*War Office*, 13 *March*, 1753.

"The Question arose upon a Petition to me from a Private Soldier, a Foreigner, wherein he says he has a Right to be Discharged. Lord Egmont has in Publick (as well as in Private to me) laid down this doctrine, and I conceive he builds it on the Act of Succession, and would make the Post of a Private Soldier a Place of Trust or Profit.

"I am, &c.,
"Yours, &c.
"H. FOX."

"*Right Hon. F. Dudley Ryder*,
"*Attorney-General*."

"19*th March*, 1753.

(4). "We are of opinion the Officer is by no Law obliged to grant him a Discharge.

"D. RYDER.
"W. MURRAY."

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## Table showing the Pay and Allowances of the Soldier and Agricultural and Town Labourer.

*Chapter* VI. *par.* 34.

| As to the Pay of a Soldier and Labourer, see 21 H.D. (3), p 1003. | Soldier. | | | Agricultural Labourer. | | | | | | | | | | | | | | | | Town Labourer. | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | | England. | | | | | | | | Scotland. | | | | Ireland. | | | | | | | |
| PAY, &c. | Private. | Corporal. | Serjeant. | Dorsetshire. | Flintshire and Denbighshire. | Yorkshire, near Doncaster. | Northumberland. | Surrey. | Hertford. | Kent. | Perthshire. Farm Servants by the year. | Ditto. Servants by the week. | Fifeshire. Married. | Ditto. Single. | Average. | Mr. Purdy's averages. England. | Mr. Purdy's averages. Scotland. | Mr. Purdy's averages. Ireland. | London. | Manchester and Birmingham. | Edinburgh. | Glasgow and Liverpool. |
| | £. s. | £. s. | £. s. | £. s. | £. s. | £. s. | £. s. | £. s. | £. s. | £. s. | £. s. | £. s. | £. s. | £. s. | £. s. | | | | £. | | £. s. | |
| 1. Yearly pay in Cash | 22 16 | 28 18 | 41 1 | 23 8 | 36 8 | 39 0 | 41 12 | 33 16 | 26 0 | 41 12* | 22 0 | 39 0 | 17 10 | 19 10 | 18 9 | .. | .. | .. | 49 | | 39 3 | |
| 2. Fuel and light | 2 0 | 2 0 | 2 0 | 3 0 | .. | .. | .. | .. | .. | .. | .. | .. | .. | .. | .. | .. | .. | .. | .. | .. | .. | .. |
| 3. Lodging | 2 0 | 2 0 | 2 0 | 3 0 | .. | .. | 4 0 | 3 10 | .. | .. | 3 0 | .. | 2 15 | 2 12 | .. | .. | .. | .. | .. | .. | .. | .. |
| 4. Garden, &c. | .. | .. | .. | ‖ | .. | .. | 1 0 | .. | .. | .. | .. | .. | .. | .. | .. | .. | .. | .. | .. | .. | .. | .. |
| 5. Carriage of fuel | .. | .. | .. | 1 15 | 2 10 | 1 15 | .. | 1 15 | 1 10 | .. | 0 15 | .. | 0 18 | 0 18 | .. | .. | .. | .. | .. | .. | .. | .. |
| 6. Harvest allowance | .. | .. | .. | .. | .. | .. | .. | .. | .. | .. | .. | .. | .. | .. | .. | .. | .. | .. | .. | .. | .. | .. |
| 7. Clothing | 2 0 | 2 0 | 2 0 | .. | .. | .. | .. | .. | 6 10† | .. | 10 15‡ | .. | ‡16 10 | ‡12 2 | .. | .. | .. | .. | .. | .. | .. | .. |
| 8. Rations, &c | 3 8 | 3 8 | 3 8 | .. | .. | .. | .. | .. | .. | .. | .. | .. | .. | .. | .. | .. | .. | .. | .. | .. | .. | .. |
| 9. Medical attendance and Sick Pay | 1 0 | 1 0 | 1 0 | .. | .. | .. | .. | .. | .. | .. | .. | .. | .. | .. | .. | .. | .. | .. | .. | .. | .. | .. |
| 10. Good conduct pay | 1 0 | 1 0 | 1 0 | .. | .. | .. | .. | .. | .. | .. | .. | .. | .. | .. | .. | .. | .. | .. | .. | .. | .. | .. |
| 11. Pension | 4 15 | 4 15 | 4 15 | .. | .. | .. | .. | .. | .. | .. | .. | .. | .. | .. | .. | .. | .. | .. | .. | .. | .. | .. |
| Annual { including Pension | 38 19 | 45 1 | 57 4 | | | | | | | | | | | | | £. s. | £. s. | £. s. | | | | |
| Annual { not including ditto | 34 4 | 40 6 | 52 9 | 31 3 | 36 18 | 40 15 | 46 12 | 33 1 | 34 0 | 41 12 | 36 10 | 39 0½ | 37 13 | 35 2 | 18 9 | 30 0 | 33 14 | 18 9 | 49 | | 39 3 | |
| | s. d. | s. d. | s. d. | s. d. | s. d. | s. d. | s. d. | s. d. | s. d. | s. d. | s. d. | s. d. | s. d. | s. d. | s. d. | s. d. | s. d. | s. d. | s. d. | | s. d. | |
| Weekly { including Pension | 14 11¼ | 17 4 | 22 0 | — | — | — | — | — | — | — | — | — | — | — | — | — | — | — | — | | — | |
| Weekly { not including ditto | 13 1¼ | 15 6 | 20 2 | 12 0 | 15 0 | 15 8 | 18 0 | 15 0 | 13 0 | 16 0 | 14 0 | 15 0 | 14 6 | 13 6 | 7 1¼ | 11 6¼ | 12 11¼ | 7 1¼ | 19 0 | | 15 1 | |

* This sum includes the extra wages and allowances which are given at hop-picking and harvesting, and is the wages of first-class labourers only.

† Daily allowance of cider. ‡ Daily allowance of oatmeal, milk, and potatoes.

§ The labourer in Perthshire engaged by the day or week gets apparently more than when engaged by the year, but this is more than counterbalanced by the number of days in the year that he is usually out of work. ‖ Is included in the 3*l* for fuel and light.

War Office, Aug. 1867.

Note.—The contingent advantages of the Soldier are not estimated in this Table.



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## ( XXXII. )

*Chapter* VII., *par.* 5.

### The Commission of the Duke of Marlborough.

"William R.

"William the Third, by the Grace of God, King of England, Scotland, France, and Ireland, Defender of the Faith, &c., To Our Right Trusty and Right Well-beloved Cousin and Councillor, John, Earl of Marlborough, Greeting: We, reposing particular Trust and Confidence in your Prudence, Courage, and Loyalty, have appointed and by these presents do appoint You to command in chief all Our Forces employed, or to be employed by Us, in the Service of the States General of the United Provinces. For the better Government of Our said Forces during their continuance in that Service, We have thought fit, and by these presents do authorize and empower You to prepare and publish such Rules and Ordinances as are fit to be observed by all Officers and Soldiers under Your Command; as also to punish all Offenders and Transgressors against the same, according to the nature of their Offences, as they shall appear upon Tryal before a Court-Martial, which we hereby give You Power and Authority to assemble as often as You shall see Occasion. To be composed of Field Officers and Captains only of Our said Army, whereof Seven at least are to make a Quorum, who are to judge of all Crimes and Offences against the said Ordinances by a majority of Voices; and according to their judgment You are to cause Sentence to be pronounced against the Person or Persons so offending, as shall be thought fit, according to the true intent and meaning of the said Articles. Which said Sentence or Sentences You are to cause to be put in Execution, or to suspend the same, as in your Discretion You shall see Cause. And whereas We have appointed a Judge Advocate to attend the said Courts-Martial, for the more orderly proceedings of the same, We do hereby give You power in case of Death, Sickness, or necessary Absence of the said Judge Advocate, to depute another person, such as in Your Discretion You shall think fit, to execute the said Office. And We do further authorize You to cause exact Musters to be taken of the respective Companys of Our said Forces, and to sign Warrants for their pay, according to the said Musters, in pursuance of our Establishment made for that purpose. And whereas by the said Establishment there is a provision made for such contingent charges as may arise for Our

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service, and the use of the said Forces. You are hereby authorized in our absence from Holland,[1] to direct the payment of the said money, in such proportions as You shall in your discretion think necessary for the purposes aforesaid. And that the respective Companys of our said Forces may not be unsupplied of Officers to command them, whilst they are abroad in the said Service, We do give you Power and Authority, in our absence from Holland,[1] in case of the Death, Removal by Sentence of a Court-Martial, or the Quitting of any of the present Officers of the said Forces, to supply the said Vacancies by such persons as You shall make choice of for that purpose, Who are to be acknowledged and to command in their respective Stations, as if they had received Commissions from Us, and to continue in their said Employments till Our further Pleasure be known. And for executing the several powers and authoritys herein expressed, this shall be your Warrant.

"Given at Our Court at Hampton Court, the First day of June, 1701, in the Thirteenth year of Our Reign.

"By His Majesty's Command,

"JA. VERNON."

[Indorsed.] "Earl of Marlborough to command in Chief the Forces employed in the Service of the States General.

"1 *June*, 1701."

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## ( XXXII.* )

*Chapter* VII., *pars.* 45-8.

### TREASURY REGULATIONS AS TO MILITARY EXPENDITURE.

#### MINUTE OF TREASURY *of 28th November*, 1764.

"*Present*—Mr. Greville; Lord North; Sir John Turner; Mr. Hunter; Mr. Harris.

"My Lords are of Opinion that no Commander-in-Chief or Governor is authorized to incur any Expence for which Money has not already been granted by Parliament or which has not been previously approved of by His Majesty, and His Majesty's Order signified by this Board for that Purpose.

*Secondly.*—That if any Governor or Commander-in-Chief shall be of Opinion that any Expence ought to be incurred for the Good

[1] These words are underlined in the Commission as entered in the Record Office.

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of his Majesty's Service, he is previously to make Representation thereof to the proper Office at Home, who are to communicate the same to this Board, that his Majesty's Pleasure may be taken thereupon, and that proper Estimates may be laid before Parliament; to the End that such Sums may be granted as Parliament shall think necessary for that Purpose.

"*Thirdly.*—That if sudden and unforeseen Emergencies should arise, where it is absolutely necessary that the Service should be undertaken, before his Majesty's Pleasure can be known, or the necessary sums be granted by Parliament for that Purpose; such Governor or Commander-in-Chief may, in these cases only, draw upon the Lords Commissioners of his Majesty's Treasury, and on no other Person whatever, and at the same Time that he make such Draught, he is to transmit to their Lordships, as well as to the proper Office, to whose Department the Service so undertaken particularly belongs, Information thereof, with the Reasons why, consistently with the Good of the Service, it was not possible to delay the incurring such Expence until such Time as the Regulations above-mentioned could be complied with.

"*Fourthly.*—That all Governors and Commanders-in-Chief be acquainted that no Bills will be accepted until the Information above required be received, and that they be at the same time apprized, that they *will become Accountants to his Majesty for the Sums they* shall respectively draw upon the Lords Commissioners of his Majesty's Treasury, and that in passing and allowing their Accounts for the Expenditure of the same, their Lordships will take into consideration *not only* the Authenticity of the Vouchers, *but the urgent Necessity of the Services* so undertaken, and the *Reasonableness* of the Prices at which the same were performed.

"Mr. Chancellor of the Exchequer is desired to lay this Minute containing the humble Opinion of this Board upon a Subject of so much Importance before his Majesty, that if his Majesty shall be pleased to approve thereof, his Royal Pleasure may be signified thereupon in such Manner as his Majesty shall direct.

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"GEORGE R.

"REGULATIONS *in Respect to the carrying on Fortifications or other Military Services by Directions of any of Our Commanders in Chief, Governors, Lieutenant-Governors, or other Officers Civil or Military, commanding in any Part of Our Dominions, or by Directions from the Master-General of Our Ordnance, or Our Board of Ordnance, within the Limits of any Command or Government.*

"*First.*—We are pleased to confirm the Minute of the Commis-

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sioners of Our Treasury of the 28th November, 1764, restraining Commanders-in-Chief and Governors from incurring any Expence without the Notice required by the said Minute, which We were then pleased to approve, a Copy of which is hereunto annexed.

"*Secondly.*—In regard to Services, the Expence of which is to be defrayed by Our Treasury; each of Our Commanders-in-Chief, Governors, Lieutenant-Governors, or other Officers, Civil or Military, commanding in any Part of our Dominions, are in each Year to cause detailed Estimates to be made out and signed by the Proper Officer, of the Expence of all such Works or other Articles or Services, Civil or Military, as may appear to such Commander-in-Chief, Governor or other Person commanding, necessary or expedient for Our Service, to be executed or provided within his Command or Government in the following Year; and he is to transmit such estimates to the Commissioners of Our Treasury, and Duplicates thereof to One of Our Principal Secretaries of State, so that they may arrive in London before the first Day of September in the Year preceding that in which it is intended to carry into Execution the Services proposed, in order that there may be full Time to enquire into and consider of the propriety of the Services, before the Estimate is laid before Parliament, for such sums as Parliament may think necessary to vote for the Purpose; and in Case such Commanders-in-Chief, Governors, Lieutenant-Governors, or other Officers Civil or Military commanding in any Part of Our Dominions, shall be of Opinion that *some contingent* Expences may be likely to be incurred, which cannot be precisely ascertained and specified beforehand, they are to include in their Estimate such a sum as will according to their Judgment be equal to the probable Amount of such Expences, and to state as far as they are able the Nature and Occasion thereof.

"*Thirdly.*—The said Commanders-in-Chief, Governors or other Persons commanding, are at the same Time to transmit Accounts to the latest Period they can be made up, of the actual Expenditure of any Money granted by Parliament, or ordered by Us to be expended in the then Current Year, and communicate any Circumstances, if there should be any, that may lead them to expect any Variation of Expence in the Execution from the Estimates before given in; and such Commanders-in-Chief, Governors, or other Persons commanding, are in like Manner, within three Months after the expiration of each Year, to transmit Accounts of the whole actual Expenditure of any Money granted by Parliament, or ordered by Us to be expended, distinguishing the same under the same Heads of Service as in the previous Estimate, accurately pointing out the several Particulars thereof.

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"*Fourthly.*—The several Commanders-in-Chief, Governors, or other Persons in Command, are not to commence any Work or Service they may have proposed, or incur any Expence on account thereof, until Our Pleasure has been duly signified thereupon, excepting only in Cases of sudden and unforeseen Emergency, where it is absolutely necessary that the Service should be undertaken before Our Pleasure can be known, or the necessary Sums be granted by Parliament for that Purpose.

"*Fifth'y.*—In such Case the said Commanders-in-Chief, Governors, or other Persons in Command, are strictly to confine themselves to such Articles as come within the foregoing Description; and they are to communicate by the very first Opportunity the peculiar Circumstances of the sudden and unforeseen Emergency, which made it absolutely necessary for them to proceed before Our Pleasure could be known. They are to transmit at the same Time regular Estimates of the Service they are carrying on. They are also to draw such Bills as may be necessary for defraying the Expence of such Service in their own Name, on the Commissioners of *Our Treasury, and on no other Person or Board whatsoever.*

"*Sixthly.*—The said Commanders-in-Chief, Governors, or other Persons commanding, are to be responsible to Us, for the indispensable Necessity of the Case which has obliged them to expend the Public Money, without previous Authority from Us; and the Commissioners of Our *Treasury* shall as soon as may be, after receiving an Account of such Expenditure, examine the Grounds thereof, and after Reference to One of Our Principal Secretaries of State, the Commander-in-Chief, the Master-General of the Ordnance, the Secretary at War, the Paymaster-General, or the Comptroller of Army Accounts, as the Nature of the Case may require, shall receive Our Pleasure thereupon; and the Commissioners of Our Treasury shall within Six Months after the Receipt of such Account signify to One of Our Principal Secretaries of State, whether We are or are not satisfied of the Necessity of such Expenditure; and if they shall signify that We *are not satisfied of such Necessity*, such Commander-in-Chief, Governor, or other Person commanding, besides incurring our Displeasure, shall be obliged *to repay into Our Treasury* the Amount of all the Bills he may have drawn *on account of the Service so undertaken without Orders;* and it is Our Pleasure that until such Monies shall be so repaid, all Pay or Allowances that may at that Time be due, or shall afterwards become due to such Person, shall be stopped, and One of Our Principal Secretaries of State is to take Care to give the necessary Orders for this Purpose.

"*Seventhly.*—In Regard to Services, the Expence of which is to be defrayed by Our Ordnance. As they are performed in conse-

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quence of Our Commands, signified to the Master-General of Our Ordnance conformable to the Votes of Parliament upon Estimates presented, and the Ordnance, is responsible to Us and to Parliament for the due Execution of such Services, it is Our Pleasure that the *sole* Direction thereof shall remain and be in the Master-General or Board of *Ordnance*, and in such Persons as they shall appoint under them for conducting the same; and that *no Commander in-Chief*, Governor, or other Commanding Officer Civil or Military shall *in any respect* interfere in the Execution thereof, by ordering Works, altering the Plans, directing the inferior Officers or Workmen, or employing them in any other Services, or in any other Manner whatsoever. And Fortifications of all Kinds, Magazines, Barracks, Officers' Quarters, and all other Military Buildings and Works, and the Construction, Care and Repair of them, and the letting of Lands and Buildings purchased or erected by the Ordnance, are to be considered as belonging to the Ordnance Department, and to be solely under their Direction; excepting always Cases of sudden and unforeseen Emergency, where any Deviation from this Order may become indispensable for the Security of the Place or Garrison, or otherwise essentially necessary for the Good of Our Service, in which Cases any Commander-in-Chief, Governor or other Person commanding, is to act according to Circumstances as Occasion shall require, taking Care that all Expences incurred thereby *be wholly* defrayed by Money drawn upon Our *Treasury*, and subject *to the Responsibility* of such Commander-in-Chief, Governor, or other Person commanding, as is expressed in the fifth and sixth Articles of these Regulations, and that *no* Money be drawn on the *Ordnance*, or Ordnance Money be expended on such Occasions.

"*Eighthly.*—At the same Time, as it is Our Intention to maintain in those whom We are pleased to employ as first in Command all the Authority which is requisite for such a Situation, it is Our Pleasure that all Orders sent by the Master-General or Board of Ordnance, to the Engineers, Officers of Artillery, Storekeepers, or other Officers Civil or Military under them, shall regularly be communicated to the Commander-in-Chief, Governor or Person commanding. And all Officers under the Ordnance both Civil and Military within any Government or Command are to be considered (subject to these Instructions) to be in all Cases under the Command of Our Commanders-in-Chief, Governors, or Commanding Officers.

"*Ninthly.*—If it should appear to any Commander-in-Chief, Governor, or other Person commanding, that any Orders issued by Our Master-General or Board of Ordnance are from unforeseen Circumstances, or otherwise, prejudicial or greatly inconvenient to Our Service, it is Our Pleasure that such Commander-in-Chief,

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Governor, or other Commanding Officer *should stay* the Execution of such Orders, and represent to Us, through One of Our Principal Secretaries of State, his Reasons for so doing.

"*Tenthly.*—When any Service in the Ordnance Department may appear to be wanting, within the Command of any Commander-in-Chief, Governor, or Person commanding, he is to cause Application to be made in due Time to the Master-General or Board of Ordnance; and if such Application is not duly attended to, he is to repeat it to One of Our Principal Secretaries of State.

"*Eleventhly.*—It is Our further Pleasure that *no Commander-in-Chief*, Governor, or other Commanding Officer, shall at any Time himself draw, or direct any Officer under the Ordnance to draw Bills on that Board, or direct any Expence to be incurred by the Ordnance; as for all Services of an *extraordinary* Nature, the Commander-in-Chief, Governor, or other Commanding Officer, is in unavoidable Cases to draw Bills on the *Commissioners of Our Treasury* in the same Manner, and under the same Regulations as are before directed.

"Given at Our Court at St. James's, the Seventh Day of September, 1791, in the Thirty-first Year of Our Reign.

"By his Majesty's Command,

"HENRY DUNDAS."[1]

"*To Our Right Trusty and Right Entirely beloved Cousin and Councillor Charles Duke of Richmond, Lennox and Aubigny, Master-General of Our Ordnance, and to Our very Loving Friends the Lieutenant-General and Principal Officers of the same, and to the Paymaster-General of Our Guards and Garrisons, and to all Governors, Lieutenant-Governors, &c., or Officers, Commanding-in-Chief in any of Our Islands, Garrisons, Towns, Forts, Castles, &c., in any Part of Our Dominions, or to any other Officers or Persons whom this does or may concern.*"

[1] As to subsequent orders see Duke of Wellington's evidence, 'Civil Administration of the Army,' 1837, p. 36. Circular of 8th September, 1840, from 'Secretary for the Colonies' Report on Ordnance Expenditure,' p. 1053, and Treasury Minute of 8th September, 1846, p. 1077.

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## ( XXXIII. )

*Chapter* VIII., *par.* 2.

MARCHING ORDER TO THE TROOPS TO PROCEED TO THE SEA COAST AND EMBARK FOR HOLLAND; AGAINST WHICH THE SCOTS GUARD MUTINIED.

"WHEREAS We have ordered the several Batallions and Regiments following, viz., two Batallions of the First Regiment of Guards, two Batallions of the Coldstream Regiment of Guards, the Royall Regiment of Foot, Prince George, Hereditary Prince of Denmark's Regiment, the Regiment commanded by Colonel Charles Churchill, the Royall Regiment of Fusiliers, and the Regiment commanded by Colonel Hodges, to embark for Holland, in pursuance of the Treaty of Alliance with the States General of the United Provinces; We do hereby charge and require you to take care that the said Regiments be forthwith embarked accordingly; And that you give order that such Regiments as are at any distance from the place or places of shipping, do march thither at such time and in such manner as you shall think fitt; and that you do, or cause to be done, all and every Thing and Things which, to the better performance of this Service, shall be requisite; And for so doing this shall be the Warrant.

"Given at Our Court at Whitehall, the 8th day of March, 168$\frac{4}{5}$.

"By, &c.,

"W. B."

"*To Our Rt. Trusty and Worthy Councillor,*
"*John Lord Churchill, Lieutenant-General of Our Forces.*"

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## ( XXXIV. )

*Chapter* VIII., *par.* 2.

LETTER AS TO SCOTS REGIMENT OF GUARDS, AND THE CAPTURE OF MUTINEERS.

"To MAJOR MAITLAND.

"SIR, "*Whitehall*, 19 *March*, 168$\frac{4}{5}$.

"His Majesty is extremely well satisfied with the orderly marching and dutifull behaviour of the Regiment of Scott Guards



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under your command, and does think it for his service that they continue their march as was first intended, to Sudbury and Ipswich, according to the inclosed Order and Route; his Majesty has likewise sent a supply of money for the Regiment, and has ordered some to be ready at Ipswich upon your arrivall there. I have moved his Majesty to permit you for one day to come to town to give him an account of the Regiment, and for setting the Officers of the Regiment; but His Majesty depends so much upon your fidelity and good conduct, as not to spare you from the Regiment, being well assured that your presence conduces extreemly to the keeping them in good order. His Majesty does therefore think it now convenient that you send him an account in writing of what may concern the Regiment, and of what Officers are removing and fitt to be preferred.

"I have had no news as yet of the Regiment of Dumbarton, only that they are all returned, except 400, to their Colours, who will be certainly cutt off by the Troops that are sent in pursuit of them, or by the Country people, in virtue of the inclosed Proclamation, which is already dispersed in all places.

"W. B."

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## ( XXXV. )

*Chapter* VIII., *par.* 2.

### Order for the Mutineers to be brought to London.

"Whereas you have seized the Rebellious Officers and Soldiers of the Royall Regiment of Foot, Our Will and Pleasure is that you cause the said Officers and Soldiers to be separated into three divisions, and to be safely conducted by such number of Horse and Dragoons as you shall think fitt to London; and that, if it shall be necessary, you order them to be tyed together in such numbers as may be fitt for the better bringing them to London. And we do further Require you to leave the Arms of the said Officers and Soldiers in safe hands untill further Order. And you are to take especiall care that Lieutenant Gandin, the Ringleader of the said Rebellion, be secured if it be possible, and brought hither in safe custody, as also the Officers with all possible expedition, to be proceeded against according to law. And that you cause the Troops, under your command, to return to their former Quarters by

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such easy marches as you shall find convenient. And for so doing this shall be your Warrant.

"Given, &c., 21 March, $168\frac{8}{9}$."

"*To Our Trusty and Well-beloved Lieutenant-Generall Ginkell, or the Officer in Chief with Our Forces at Vockingham, or in those parts.*"

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## ( XXXVI. )

*Chapter* VIII., *par.* 3.

### The First Mutiny Act (1 William & Mary, Cap. 5).

"*An Act for punishing Officers or Soldiers who shall Mutiny or Desert their Majestyes Service.*

"Whereas, the raising or keeping a standing Army within this kingdome in time of peace unlesse it be with consent of Parlyament is against law. And whereas it is judged necessary by their Majestyes and this present Parlyament That dureing this time of Danger severáll of the Forces which are now on foote should be continued and others raised for the Safety of the Kingdome for the common defence of the Protestant Religion and for the reduceing of Ireland:

"And whereas noe man may be forejudged of Life or Limbe, or subjected to any kinde of punishment by Martiall Law, or in any other manner than by the judgement of his Peeres, and according to the knowne and Established Laws of this Realme. Yet nevertheless, it being requisite for retaineing such Forces as are or shall be raised dureing this exigence of Affaires in their Duty an exact Discipline be observed, And that Soldiers who shall Mutiny or Stirr up Sedition, or shall desert Their Majestyes Service be brought to a more exemplary and speedy Punishment than the usuall Forms of Law will allow:

"Bee it therefore Enacted by the King and Queenes most Excellent Majestyes by and with the Advice and Consent of the Lords Spirituall and Temporall and Commons in this present Parlyament assembled, and by authoritie of the same, That from and after the Twelfth day of Aprill in the yeare of Our Lord One thousand six hundred eighty-nine every person being in Their Majestyes Service in the Army, and being mustered and in pay as an Officer or Soldier,



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who shall at any time before the Tenth day of November in the yeare of our Lord One thousand six hundred eighty-nine, excite, cause, or joyne in any mutiny or sedition in the Army or shall desert Their Majestyes Service in the Army, shall suffer death or such other punishment as by a Court-Martiall shall be inflicted.

"3. And it is hereby further enacted and declared, That Their Majestyes, or the Generall of their Army for the time being, may by vertue of this Act have full power and authoritie to grant Commissions to any Lieftenants, Generall or other Officers, not under the degree of Collonells, from time to time to call and assemble Court-Martialls for punishing such offences as aforesaid.

"4. And it is hereby further enacted and declared, That noe Court-Martiall which shall have power to inflict any punishment by vertue of this Act for the offences aforesaid shall consist of fewer than thirteene, whereof none to be under the degree of Captaines.

"5. Provided alwayes, That no field Officer be tryed by other than field Officers. And that such Court-Martiall shall have power and authoritie to administer an oath to any witness in order to the examination or tryall of the offences aforesaid.

"6. Provided alwayes, That nothing in this Act contained shall extend or be construed to exempt any officer or soldier whatsoever from the ordinary processe of Law.

"7. Provided alwayes, That this Act, or anything therein contained, shall not extend or be any wayes construed to extend to or concerne any of the Militia Forces of this Kingdome.

"8. Provided alsoe, That this Act shall continue and be in force untill the said Tenth day of November in the said yeare of our Lord One thousand six hundred eighty-nine and noe longer.

"9. Provided alwayes, and bee it enacted, That in all tryalls of offenders by Courts-Martiall to be held by vertue of this Act, where the offence may be punished by Death, every Officer present at such tryall, before any proceeding be had thereupon, shall take an oath upon the Evangelists before the Court (and the Judge Advocate or his Deputy shall, and are hereby respectively authorized to administer the same) in these words, that is to say:—

"'You shall well and truly try and determine according to your evidence the matter now before you between Our Soveraigne Lord and Lady the King and Queen's Majestyes and the Prisoner to be tryed,

"'Soe helpe you God.'

"10. And noe Sentence of Death shall be given against any offender in such case by any Court-Martiall unlesse nine of thirteene Officers present shall concur therein. And if there be a greater

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number of Officers present, then the judgement shall passe by the concurrence of the greater part of them soe sworne, and not otherwise; and noe Proceedings, Tryall, or Sentence of Death shall be had or given against any Offender, but betweene the houres of eight in the morning and one in the afternoone."

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## ( XXXVII. )

*Chapter* VIII., *par.* 8.

CIRCULAR FROM SECRETARY AT WAR (ADDRESSED TO THE EARL OF OXFORD) CONVEYING THE THANKS OF THE HOUSE OF COMMONS TO THE ARMY OF JAMES II.

"MY LORD, "*Whitehall*, 4 *Feb.*, 168⅘.

"The Honourable the House of Commons having communicated the enclosed Vote to me and the General Officers of the Army, I send your Lordship this copy thereof, that it be so imparted to the Officers and Soldiers under your Lordship's command, by your causing it to be read at the head of the several troops of the Regiments whereof your Lordship is Colonel.

"I am, &c.,

"W. B."

"*Veneris*, 1^mo *die Feb.*, 168⅘.

"Resolved, *nemine contradicente*,—

"That the thanks of this House be given to the Officers, Soldiers, and Marriners in the Army and Fleet, for having testifyed their sturdy adherence to the Protestant Religion, and been instrumentall in delivering this kingdom from Popery and Slavery, and also to all such who have appeared in arms for that purpose.

"Ordered—

"That the Lord Falkland, Mr. Sidney, Mr. Wharton, and Sir Robert Lowther, do communicate such thanks to the general Officers of the Army and Fleet.

"PAUL JODREL, Ck. D. C."

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## ( XXXVIII. )

*Chapter* VIII., *par.* 11.

REPORT OF LAW OFFICERS AS TO THE CONSTITUTION OF COURTS-MARTIAL, OTHER THAN THOSE HELD UNDER THE MUTINY ACT.

"WE are humbly of opinion that in the Case of Punishment of false Musters or other offences not being Mutiny, Desertion, or change from one Regiment or Troop to another, That a Court-martial may consist of a lesser number of Officers than thirteen, so as the Court-martial do consist of such a number of Officers as by Law Martial do constitute such a Court.

"EDWD. WARD,
"THOS. TREVER."

"21 *July*, 1694."

*Note.*—See 'English Military Discipline, 1686,' cited 2 Grose's 'Military Antiquities,' p. 72 (Edit. 1801).

## ( XXXIX. )

*Chapter* VIII., *pars.* 11, 24.

(1.) WARRANT OF WILLIAM THE THIRD FOR HOLDING A COURT-MARTIAL UNDER THE MUTINY ACT IN FORCE FOR THE TRIAL OF OFFENDERS.

"WILLIAM R.

"WHEREAS, an Act has been passed and continued by severall Sessions of Parliament for the punishing Officers and Soldiers who should Mutiny or Desert our Service in the Army, or be found guilty of false musters; and whereas, by an Act passed the last Session of this present Parliament, the same is now continued in full force from the 10th day of Aprill, 1696, untill the 10th day of Aprill, 1697, We have therefore thought fitt hereby to authorize and require Henry Hook, Esq., Lieutenant-Governor of Our Royall Cittadell of Plymouth, or the Officer in Chief Commanding there, to call and assemble Courts-Martiall and to be President of the same, which Courts-Martiall are to be constituted according to the said

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Act of Parliament, and to meet at such time or times as the said President shall appoint, for the punishing such Mutiny, Desertion, or False Musters; and We do further authorize and empower the said Court-Martiall to hear and examine all such matters and informations as shall be brought before them, touching the misbehaviour of any officer or soldier by Mutiny, Deserting, or False Musters as aforesaid, and to proceed in the tryal of such offenders, and in giving of sentence and inflicting of punishments, according to the powers and directions mentioned in the said Act of Parliament (a copy whereof is hereunto annexed); and for so doing this shall be a sufficient Warrant.

"Given at our Court at Kensington, this 9th day of February, 1696-7, in the eighth year of Our Reign.

"By &c.,

"W. TRUMBULL.

"MEM.—His Majestys further Pleasure is that no sentence of death be put in execution till an account be first given to himself in pursuance of the directions to that purpose in the 92nd Article of Warr, and His pleasure declared thereupon."

*Note.*—The memorandum on this Warrant proves to demonstration—if such proof be needed—that the King continued to issue Articles of War notwithstanding the Mutiny Act was silent on the subject.

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*Chapter* VIII., *par.* 24.

(2.) PROCEEDINGS[1] OF A COURT-MARTIAL UNDER THE LAST WARRANT, AND CONFIRMATION OF THE SENTENCE, WITH A DIRECTION FOR THE CONDEMNED MEN TO CAST LOTS FOR LIFE.

"AT a Court-Martiall held at the Guildhall in the Citty and County of Exon by vertue of an order directed to Major Thos. Carew, of Colonel Norcott's Regiment of Foot, for tryiug mutaniers and

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[1] There are earlier cases of sentences to capital punishment (pp. 121, 138, 143), but this is the first case I have met with having the King's direction to save the life of prisoner by casting lots. In another case (p. 162), where the soldier pleaded that he was only going to see his wife and children, having letters that they were *very ill*, the Court awarded that the prisoner should be shot to death, but that "the putting of the judgment in execution should stay until His Majesty's pleasure should be known."

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deserters in Major Generall Stewart's Regiment of Foot, bearing date the 13th of January, 169$\frac{4}{5}$, by vertue of which order the Court-Martiall satt on Thursday the 28th of the same instant, upon the tryalls of Elias Mundon, William Bussell, Anthony Johnston, Vincent Collonge, and Michall Roberts, deserteurs from the said Regiment, and then ajourned to the 9th of February following, and then proceeded to the tryalls of the above mentioned.

"Major Thomas Carew, Presedent.

| | |
|---|---|
| Capt. John Stewart, Senior. | Lieut. Thomas Daulkins. |
| Capt. John Stewart, Junior. | Lieut. Thomas Hills. |
| Capt. George Cary. | Ensign William Taylor. |
| Lieut. Alexander Coningham. | Ensign Thomas Fitz-Maurice. |
| Lieut. John Birks. | Ensign Thomas Hussey. |
| Lieut. Alexander Walace. | Ensign Tobias Stewart. |

"It is the opinion of this Court-Martiall that Elias Mundon, William Bussell, and Anthony Johnston are guilty of the Twenty-third Article, for which they are sentenced to be shott to death at the head of the Regiment upon some field-day.

"It is the opinion of this Court-Martiall likewise, that Vincent Collouns and Michall Roberts are likewise guilty of the same Article in leaving there Garison without leave from there Officers, but it apearing by severall that were produced on behalfe of the Prisoners above-mentioned that they left there clothes behind them with a designe to returne, the Court has thought fitt to sentence the said Vincent Collouns and Michall Roberts to knell by the above prisoners duering the time of their execution, and three field dayes successively afterwards to be tyed to a post at the head of the Regiment, and there to receive twenty stripes a peace each day from a drum-beater upon the naked back, and then to rec$^{d}$ to the Regiment as usuall.

"Thos. Carew."

"William R.

"His Majesty approves of the proceedings of this Court-Martiall, but being graciously inclined to extend his mercy to two of the prisoners, is pleased to order that the three condemned soldiers do draw lotts, and that he only on whom the lott of death do fall be executed, and does think fitt hereby to pardon the two others.

"Given at our Court at Kensington, this 10th of March, 169$\frac{4}{5}$."

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# ( XL. )

*Chapter* VIII., *par.* 12 (*note* 5).

## Letters as to the Preparation and Issue of the First Articles of War, under the Mutiny Act 1715.[1]

(1.) "Gentlemen, "*Whitehall, 15th June*, 1715.

"It having been usual in former reigns to give an oath to the soldiers, and they not having taken any since His Majesties accession to the throne, His Majestie hath declared His pleasure that an oath be tendered to them at the next muster, I have his commands to desire your opinions what oath may be legall and proper upon this occasion, and what alterations you judge necessary to be made in the Articles of War, which are here enclosed, with respect to the forces at home and abroad, agreeable to the present Bill for Mutiny and Desertion. You will please not only to be particular herein, but also as speedy as you can, the same being to be laid before his Majestie and the Cabinet.

"I am, &c.,

"William Pulteney."

"*Mr. Attorney and Solicitor-General.*"

(2.) "Sir, "*Whitehall, 25th July*, 1715.

"By His Majesties command, I send you the inclosed Bill that you may make what alterations or additions you think proper, and also to consider of the Articles of War, if the same be necessary to be inserted in the Bill, or in what other manner you think the same may be renewed.

"I am, &c.,

"*Mr. Attorney-General.*" "William Pulteney."

(3.) "Sir, "*Whitehall, August 13th*, 1715.

"His Majestie, &c., &c., I am commanded to transmit to you the late Articles of War which are here enclosed for the opinion of the General Officers upon the same, and to know what alterations or addition the said General Officers shall judge necessary to make; and this you are to lay before them at their next meeting, it requiring immediate dispatch. Enclosed also you have the present Act.

"I am, &c.,

"*Thomas Byde, Esq.*" "William Pulteney."

[1] This Report was laid before Parliament on 14 Feb., 1748 (see 25 Com. Journ. p. 740), but I have failed to trace it in the War Office Books.

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(4.) "SIR, "*Whitehall, 18th August*, 1715.

"I have yours of the 9th instant, &c. I have here enclosed to you the two Acts of Parliament, about Mutiny and Desertion, and as soon as the Articles of War are settled by the Board of General Officers, and printed, I shall send the same to you with an order to hold Courts-Martiall.

"I am, &c.,

"*Major-General Whetham.*" "WILLIAM PULTENEY."

(5.) "SIR, "*Whitehall, September 3rd*, 1715.

"I have your letter of the 28th last, &c., &c.; also by the next post I hope to send you an order for holding Courts-Martiall, with the Articles of War, which you should have had sooner, but that the said Articles of War were not printed till last week.

"I am, &c.,

"*Major-General Whetham.*" "WILLIAM PULTENEY."

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## ( XLI. )

*Chapter* VIII., *par.* 16 (*note* 2).

### (1.) REPORT OF SIR E. NORTHEY ON THE MUTINY ACT OF 3 & 4 ANNE.[1]

"*Statement.*

"WHEREAS by the Statute of 3 and 4 of Her present Majesty for the Punishing Mutiny and Desertion, it is enacted (fol. 244), That every person being in Her Majesty's Service in the Army, and being mustered and in pay as an officer, or listed and in pay as a soldier, according to the directions of an Act entitled, 'An Act for the better Recruiting Her Majesty's Land Forces and the Marines for the year 1705,' who shall at any time be found to excite, cause, or join in any mutiny or sedition in the Army, or desert Her Majesty's Service in the Army, shall suffer death.

"*Query.* Whether any soldier can be legally committed for either the offences above mentioned, unless it be alleged and proved that before the time of coming thereof he had been listed and in pay as a soldier, according to the directions of the said recited Act, and not otherwise?

[1] Court-martial Book, p. 38.

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"*Report.*

"The preamble of the Act for punishment of mutiny and desertion shows plainly the Parliament intended a regulation of the old as well as of the new raised soldiers. The 1st clause, fol. 244, by mistake seems to be restrained to such soldiers only as are listed according to the Act for better recruiting Her Majesty's Forces.

"The clause, fol. 269, subjects the officers and soldiers of the Marine Regiments, and those employed in the Trains of Artillery, generally, without any restriction in that clause, to the penalties and punishments mentioned in that Act. However, this last clause being to obviate a doubt which might be made in the intent and meaning of the Act, seems to relate to the clause 244, and if so construed, perhaps it will—as it brings it within that clause—bring the Marines within the restriction in that clause :—'And the Councill of Warr who are to trye the Marines who have lately mutinied against their officers'—doubtless their authority to try them, unless acted according to the directions of the late Act for raising recruits and the lives of Her Majesty's subjects being considered in the question, and another difficulty arising from the clauses in this Act, enabling Her Majesty to grant Commissions to call and assemble Courts-Martiall for punishing such offenders which are thus described, fol. 244; I am of opinion it will be proper and for Her Majesty's Service that this matter be explained by Act of Parliament.

"*Statement.*

"And whereas there are some non-commissioned officers at this time accused of mutiny, whom Her Majesty intends should be brought to tryall, and whom the methods prescribed for listing soldiers have not been any way observed.

"*Query.* Whether a Sergeant, Corporall, or Drummer, be not an officer within the meaning of the words in fol. 244 afore-mentioned, which is doubted, for that no such persons have been at any time deemed officers within 25 Chas. II., or within any other subsequent Act requiring officers in publick employments to qualify themselves. In which case, therefore, how is a Court-Martial to proceed against such?

"*Report.*

"I am of opinion 'officer' within this Act shall be taken in the acceptation and use of that word in the 'Army;' and officers are sufficiently ascertained in the Act to be such as are mustered and in pay as officers, though they are not officers within the intent of the Act of 25 Car. II., besides, fol. 245 of this Act, notice is taken of the

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difference in the Army between commissioned and non-commissioned officers, and therefore the Court-Martial may proceed against all persons that are mustered and in pay as officers.

"*December 29th*, 1705." "EDW. NORTHEY."

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(2). REPORT AS TO A SOLDIER'S LIABILITY TO TRIAL AND PUNISHMENT FOR AN OFFENCE COMMITTED AGAINST A MUTINY ACT THAT HAD EXPIRED.[1]

"*Statement.*

"A. deserts his Majesty's Service in the Army in the year 1716, and is not brought to a Tryall till April, 1718.

"*Quere.* Whether he is to be tryed by the Act of Parliament against Mutiny and Desertion which was in force in the year 1716, or by the Act of Parliament in that behalf, which is now in force?

"*Report.*

"The Acts of Parliament against Mutiny and Desertion are that, whoever shall desert between such a day and such a day shall suffer death, and there is a power given to appoint Courts-Martiall from time to time for punishing such offenders. In the year 1716 it is, 'Deserters between 25th March, 1716, and the same day 1717;' therefore all Deserters between those times must be tryed by a Court-Martiall appointed by virtue of that Act, and according to that Act. And this last Act is only for Deserters after the 24th of March, 1717, and before the 25th of March, 1719.

"WM. THOMPSON."

"26 *Aprill*, 1718."

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(3). REPORT[1] OF SIR ROBERT RAYMOND UPON THE ARTICLES OF WAR, 1721.

"*To the King's Most Excellent Majesty.*

"MAY IT PLEASE YOUR MAJESTY,

"In humble obedience to your Majesty's commands signifyed to me by the Right Honourable the Lord Carteret, one of your Majesty's principal Secretaries of State, by his letter of the 22nd day of January last, that I should peruse the Articles of War

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[1] Mis. Book 521, p. 72. [2] Letter Bk. 721, p. 5.

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therein transmitted to me and herewith inclosed, and report my opinion whether they are agreeable to the Act of Parliament, I humbly certify your Majesty that I have perused the said Act and Articles of Warr, and I can't observe but that they are agreeable to the Act of Parliament; except in the 44th Article, viz., is not agreeable to the Act as passed this Session, there being an alteration made therein from what the Act was last year. And therefore I should humbly propose that the 44th Article, as also the 16th Article (the substance whereof I apprehend will be comprised in what follows) should be left out, and in the room of the 16th Article the Article following inserted, viz.—'In case any officer, noncommissioned officer, or soldier, shall be accused of any capital crime, or of any violence or offence against the person, estate, or property of any of the subjects of this kingdom, which is punishable by the known laws of the land, the commanding officer or officers of every regiment, troop, company, or party, is and are hereby required, upon application made to the then commanding officer on behalf of the party injured, to use his utmost endeavours to deliver over such accused person to the civil magistrate, and shall also be aiding and assisting to the officers of justice in the securing and apprehending such offender in order to bring him to tryal. And if any such commanding officer shall wilfully neglect or refuse upon such application as aforesaid to deliver over any such accused person to the civil magistrate, or to be aiding and assisting to the officer of justice in the apprehending such offender, he shall incur Our highest displeasure, and suffer such other penalty as by the Act of Parliament is for that purpose inflicted.'

"All which is most humbly submitted to your Majesty's Royal wisdom.

"*7th March*, 1721." "ROBERT RAYMOND."

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(4). REPORTS FROM THE LAW OFFICERS ON THE ARTICLES OF WAR AND THE MUTINY ACTS OF VARIOUS DATES, AND AS TO THE MITIGATION OF PENAL TO CORPORAL PUNISHMENT.

"*Whitehall*, 8 *Feb.*, $172\frac{7}{8}$.

"GENTLEMEN,—His Majesty being empowered by Act of Parliament to constitute Courts-Martial, for the tryal of Offences committed in this Army,[1] by virtue whereof Soldiers are frequently condemned to suffer death for desertion by the sentence of a

[1] Letter Bk. 157, p. 150.

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General Court-Martial, I am to desire you will send me your opinion for His Majesty's information, whether, when a Soldier is adjudged to dye by such a Sentence, His Majesty cannot mitigate the same and turn it into a corporal punishment.

"I am, &c.,

"*Mr. Attorney-General,* "H. PELHAM."
"*and Mr. Solicitor-General.*"

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## (5). REPORT OF THE LAW OFFICERS THEREON.

"*Lincoln's Inn*, 10 *Feb.*, 1727."

"SIR,—We received your letter of the 8th inst.,[1] whereby you desire us to send you our opinion for His Majesty's information, whether, when a Soldier is adjudged to suffer Death for desertion by the sentence of a General Court-Martiall, His Majesty cannot mitigate the same, and turn it into a corporal punishment.

"We have considered the Act for punishing Mutiny and Desertion, and the Articles of War founded thereupon, in relation to this Question, and find that the power of inflicting the punishment of Death or any other penalty in this and all other cases, is lodged in the respective Courts-Martiall; and, therefore, all Judgments that can legally be executed, must be the Judgments of such Courts-Martiall. And though, by the twentieth Article of War, it is provided that the Sentence of any General Court-Martiall shall not be put in execution untill report be made of the whole proceedings to His Majesty, or the Generall Commanding in Chief, and his directions are signified thereupon; yet we conceive that was only intended to give His Majesty an opportunity of extending His Royal Mercy by pardon or reprieve: Therefore, we are humbly of opinion, that after any sentence given by a Court-Martiall, His Majesty may exercise his Prerogative of Reprieving the offender, or pardoning him by remitting the whole or any part of the Judgment; but, that as the Law now stands His Majesty cannot change the Sentence of Death into any other corporal punishment, because, though it is a Mitigation in favour of the Criminal, yet it is giving a new and different Judgment, which the Law doth not admit of.

"We are, &c.,

"P. YORKE,
"C. TALBOT."

"*The Hon. H. Pelham.*"

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[1] Letter Bk. 721, p. 22.

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## (6.) As to increasing the Punishment of the Mutiny Act by Articles of War.

"Sir, "*Whitehall, 8th November*, 1728.

"The King having observed by the Ninth Article of Warr[1] that a soldier for resisting or striking his officer can only suffer corporal punishment, and apprehending this offence to be of so high a nature as to prove of very dangerous consequence to His troops and service, should it not be attended with the same punishment as the Act of Parliament directs in the case of Mutiny and Desertion, which inflicts death on the offender, His Majesty has thereupon been pleased to command me to transmit to you the inclosed Articles of Warr which are now in force, to the end you may, upon perusing them and consulting the Act of Mutiny and Desertion, frame the Ninth Article so as to make the offence of resisting or striking an officer punishable with death, provided it is not contrary to the intent and meaning of the said Act of Parliament; and if this cannot be done, that you will then turn your thoughts on forming something of this nature to be offered in Parliament in the ensuing Sessions when the next Bill for Mutiny and Desertion shall be brought on.

"I am, &c.,

"*His Majesty's Attorney-General.*" "H. Pelham."

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## (7.) Report thereon.

"Sir, "*Lincoln's Inn, December 3rd*, 1728.

"I have received the honor of His Majesty's commands signified by you, directing me to consider the Ninth Article of War[2] relating to the penalty of an officer or soldier resisting or striking an officer, and to frame the Article so as to make that offence punishable with death, provided it be not contrary to the intent and meaning of the Mutiny Act.

"In obedience to those commands I have considered the Articles of War and the Act of Parliament, and am of opinion that it is not in the power of a Court-Martial to punish any other offences with death except such as are described in the first clause of that Act, and that as the law now stands the Articles cannot be so framed as to give them such a power; therefore the question is whether the resisting or striking an officer is within the description contained in the 1st clause.

[1] Letter Bk. 157, p. 334. [2] Ib. 721, p. 29.

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"The only offences there enumerated which seem capable of including those now under consideration are the beginning, exciting, causing, or joining in any mutiny or sedition in any company, troop, or regiment, in His Majesty's Service, or refusing to obey any lawful command of his superior officer; and I apprehend that for any officer or soldier to strike his superior officer in the execution of his office with an intent to obstruct therein, and to stir up an opposition to his authority, is beginning a mutiny or sedition, and may be punished capitally within the meaning of the first clause; but if such striking should be only upon a private quarrel without any relation to his office, nor attended with any consequences to the Service, it would not be within those words; and it is this latter kind of striking to which I think this Ninth Article is adapted.

"As to the resisting any officer in the execution of his office, if it be done by a soldier or inferior officer to his superior officer, I think it may easily be brought within the Act. For if such superior officer doth but command the inferior officer or soldier to submit to his authority, and he afterwards resists by striking or otherwise, it will be a refusal to obey a lawful command of his superior officer, and punishable with death by virtue of those words in the Act.

"The only doubt which seems to remain is whether, if a superior officer should resist an inferior officer in the execution of his office, that offence can be punished with death; and if it should be done in such manner as to amount to the beginning or exciting of a mutiny or sedition, I think it might be so punished by virtue of this Act, otherwise not. And it may perhaps deserve consideration how far it would be proper to extend the penalty of death further in this last case.

"Upon the whole, I think the Articles are framed according to the intent of the Mutiny Act now in force, except that in the Seventh Article the word 'begin' is omitted before the word 'excite,' which, I believe, is agreeable to former precedents, but that word may be inserted in the Articles for the next year.

"If, with this small alteration, the purposes of the Service can be answered, I humbly submit whether it will be advisable to endeavour at any additions to that law in ensuing Session, considering how new attempts of that kind are generally received in Parliament. But if it shall be his Majesty's pleasure that anything of this nature should be proposed, I will endeavour to prepare some clause or words that may answer the intention.

"I am always, with great respect, Sir,

"Your most obedient, humble Servant,

"P. YORKE."

"*The Right Hon. H. Pelham.*"

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## (8.) As to the Amendments of the Mutiny Act according to the last Report.

"Sir, "*Whitehall, 10th February*, 1728-9.

"You may please to remember that upon your having received two letters[1] from Mr. Secretary Pelham some time since, you made him returns in answer to each of them, copies of which I send you inclosed, and am by His Majesty's command to desire that as the Mutiny Bill is soon to be offered to the House, and new Articles of Warr to be prepared for His Majesty's signing conformably to it, you will please to take it into your consideration what may be necessary to be done by way of amends; I mean by granting a power to His Majesty to change the sentence of death into corporal punishment when particular circumstances plead in favour of the person convicted; and also to make some amendment to the Ninth Article of Warr, which only inflicts corporal punishment upon an officer and soldier for resisting or striking his superior officer, His Majesty thinking this Article of so much consequence to his Service.

"My being uncertain of the honour of meeting with you at your chambers, and the time being short, makes me presume to give you the trouble of this.

"I am, &c.,

"Richard Arnold."

"*Rt. Hon. Sir Philip Yorke,*
"*His Majesty's Attorney-General.*"

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## (9.) Proposed Amendments and Report.

"Sir, "*February 16th*, 1728.

"Inclosed you receive the papers transmitted to me by Mr. Arnold,[2] together with a draft of such amendments to the Mutiny Bill as you desired, referring to the places in the Act now in force, wherein they are proposed to be inserted; but as I am truly apprehensive that the giving power to change the judgment of death into corporal punishment may be attended rather with inconvenience than advantage to His Majesty's Service, I will beg leave to state to you my objections upon that head.

"In the first place, it is giving judgment for a corporal punishment by the King in person. This is contrary to the principles of

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[1] Letter Bk. 158, p. 77. [2] Ib. 721, p. 25.



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the law of England, by which the King personally never gives judgment, especially of punishment, for mercy is his proper act; and though the lessening the penalty has something of mercy in it, yet, in this case, the King is to give a new judgment of punishment, which, in many instances, may be thought necessary to be very severe; and it differs greatly from the case of ordering felons to be transported, which is done by way of pardon upon condition of transportation, which is the party's own act, or else it is the immediate act of the Court where the offender is convicted; but there is no such instance as changing the judgment, or pardoning offenders upon condition of suffering a different corporal punishment.

"Another objection which occurs to me is, that it will render His Majesty liable to vastly more applications and greater importunity than he is at present; for there are cases in which people would be tender and ashamed to ask directly for a pardon where they would possibly presume to be very importunate for a change of the judgment of death into a corporal punishment less than death.

"The consequence of this will probably be to weaken the dread and terror of the judgment of the Court-martial; for when the soldiers find that they have a greater chance to prevail by the importunity of friends to obtain an absolute pardon, they will be less afraid to commit those crimes which are now ordinarily punished with death.

"Another consequence which I apprehend is, that it may tend to make the Courts-martial less careful and circumspect in their judgments, when they know there is opportunity to change the punishment in nature of an appeal from their sentence. This may, in some cases, prove very mischievous, especially since it is impossible that His Majesty should have the same degree of evidence before him which they had who examined the witnesses *vivâ voce* in open Court.

"These objections seem to arise from the nature of the thing; but there is another which arises from the power of the Mutiny Bill. The Court-martial itself is not confined to give judgment of death in all cases of the offences enumerated in the first clause, *but death, or such other punishment as a General Court-martial shall inflict.* Now it will seem a little odd that when the Court, who had all the witnesses and proofs before them, and had power to give judgment of death, or for a lesser punishment, at their election have upon the whole matter given judgment of death, there should be another resort, not for mercy only (which is a proper power, essential and appropriate to the Royal person), but for a new judgment, without having any opportunity of examining and hearing the same evidence.

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"These are my poor thoughts, which I have set in haste down, with the utmost deference to better judgments, and leave to you to make such use of as you shall judge proper.

"As to the amendment about striking or resisting an officer, I have made it 'a superior officer,' agreeable to Mr. Arnold's letter to me; but if it is intended to extend to all officers being in the execution of their office, the word 'superior' may easily be left out. I have also confined it to the being in the execution of their office, because I took it not to be designed to make every striking of an officer, though in a sudden accidental quarrel, punishable with death. I have altered the 8th and 9th Articles of War agreeably to this amendment.

"I beg you will believe this to be writ, as it really is, with the greatest zeal for His Majesty's Service, and that I am, with the truest respect,

"Sir,

"Yours, &c.,

"*The Right Hon. H. Pelham.*" "P. YORKE."

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## (10). REPORT[1] OF THE ATTORNEY-GENERAL (1737) AS TO GIVING THE PRESIDENT OF A COURT-MARTIAL THE POWER TO CONFIRM ITS PROCEEDINGS.

"SIR, "*5th September*, 1737.

"In obedience to His Majesty's commands signified to me by your letter of the 31st August last, in which I am desired to give you my opinion in relation to His Majesty's authorising the President of a Court-martial in Jamaica to confirm sentences of death to be passed by the same Court, I am of opinion that the giving such a power is not agreeable to the intent of the 20th Article of War, on which the necessity of any Confirmation is founded, since by that Article no sentence of a General Court-martial is to be put in execution till a Report made to his Majesty, or the General Commanding-in-Chief and his direction signified thereon. This supposes the sentence to go through another examination, and the directions concerning the execution of it to be given by others than those who past it, which would not be the case if the President is to confirm his own judgment, and direct the carrying it into execution. And as I do not find there has ever been any instance of the like power granted to

[1] Book 721, p. 46.



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the President of a Court-martial, it seems to me not advisable to grant it in the present case.

"D. RYDER."

"*Richard Arnold, Esq.*"

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*Chapter* VIII., *par.* 16 (*note*).

## (11.) REPORT[1] OF SIR L. KENYON UPON THE PROSECUTION OF A PRINTER FOR PUBLISHING A TRIAL BY COURT-MARTIAL.

"*Case.*

"THE General Court-martial now sitting upon the trial of General Murray, at the instance of the prisoners and prosecutor, have ordered the witnesses to be examined separate and apart, but the end of the Court and parties is defeated if the evidence is retailed out to the public in the daily prints. The Court, therefore, has made complaint thereof to the Secretary at War; and he is very desirous of stopping such complaints, if possible.

"Be pleased, therefore, to give your Opinion whether the publishers of articles in the daily papers, as the substance of the evidence given on the trial of General Murray, are not liable to some and what prosecution.

"*Report.*

"I think it will be prudent for the President of the Court-martial to express to the audience to-morrow the opinion the Court entertains of the bad consequence of those publications, and notice in writing should be immediately given to the publishers of the several papers that they must not persist in publishing an account of what passes; and in case they shall continue to publish after this caution, I think it will be proper to proceed criminally in the Court of Queen's Bench.

"L. KENYON."

"*Lincoln's Inn, 27th Nov.*, 1782."

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*Chapter* VIII., *par.* 16 (*note*).

## (12.) AS TO AMENDMENTS IN 1804.[2]

"*Statement.*

"THE powers given by the Mutiny Act (43 George III., c. 23, s. 10) for convening Courts-martial in his Majesty's Foreign Dominions or elsewhere beyond the seas, are restricted 'to the trial of Offences

[1] Bk. 722, p. 87.

[2] Opinion Bk. 215, p. 230.

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committed by any of the Forces under the several command of the Officers then Commanding,' and the form of the Warrants issued in consequence, and the construction given to them in practice, has been not to authorise any such Commanding Officer to take cognizance of offences committed previous to the time of his entering upon such command, the inconvenience of which is obvious, and which it is proposed to remedy in the Mutiny Act of the present year, which it is presumed may be done by inserting after the words '*under their several command,*' the following, '*whether the same shall have been so commanded previous to or after such General Officer shall have taken upon himself such command.*'

"*Report.*

"The words proposed to be introduced seem to us to be very proper.

"SPENCER PERCIVAL,
"THOMAS MANNERS SUTTON."

"*Lincoln's Inn Fields,*
*Feb.* 16*th*, 1804."

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## ( XLII. )

*Chapter* VIII., *par.* 20.

REPORT OF LAW OFFICERS AS TO ARTICLES OF WAR LIMITING THE DISCRETION CONFERRED ON A COURT-MARTIAL BY THE MUTINY ACT.

"GENTLEMEN, "*War Office*, 10 *Mar.* 1748-9.

"By the King's commands I transmit the enclosed Case to you; and as the solution of it is of consequence to his Majesty's Service, I desire you will be pleased to send me your Opinion upon it as soon as possible. "Yours, &c.,
"H. FOX."

"*Attorney and Solicitor-General.*"

"Section the 1st of the Act for punishing Mutiny and Desertion directs that Offenders in such cases mentioned in the said Act shall suffer death, or such other punishment as by a Court-martial shall be inflicted.

"*Query.*—Whether such of the Articles of War which direct that Offenders shall suffer Death without inserting therein the words above scored under, Be Legall?"

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"*Opinion.*

"The power of trying and punishing offences by martial law within the Realm in time of Peace depending upon the Act of Parliament, and it being thereby left to the discretion of a Court-martial to determine whether a Person guilty of any of the offences specified in the Clause referred to shall suffer Death or a milder punishment, we think this alternative cannot be taken from the Court-martial by the Articles of War, and therefore ought to be inserted therein. But whether it be or be not inserted in the Articles, we are of opinion that the Alternative is vested in the Court-martial by virtue of the Act of Parliament.

"D. RYDER.

"11 *March*, 1748." "W. MURRAY."

## ( XLIII. )

*Chapter* VIII., *pars.* 33, 68.

LETTERS[1] AS TO REVISION OF COURT-MARTIAL SENTENCE, AND THE SUBSTITUTION OF CORPORAL FOR CAPITAL PUNISHMENT.

"SIR, "*Whitehall*, 24 *Nov.* 1715.

"I have laid before his Majesty the Report of two Courts-martial, wherein Edward Seager, a Soldier in Colonel Pocock's Regiment, and Stephen White, a Soldier in Brigadier Groves's Regiment, were severally found guilty of Desertion and sentenced to be shot, and received the King's Commands to acquaint you that he confirms the sentence passed upon Edward Seager; but in regard it does not plainly appear that the Articles of Warr were ever regularly read to Stephen White, his Majesty has been graciously pleased to mitigate his Sentence by ordering him to run the gauntlet three times through the Regiment, which you are to acquaint the Commanding Officer of each Regiment withall, that the said Sentences may be put in execution accordingly.

"I am, &c.,

"*Judge-Advocate-General.* "WM. PULTENEY."

"SIR, "*Whitehall*, 3 *Dec.* 1715.[2]

"I have laid the several sentences of the Courts-martial herewith returned you before his Majesty, and am to acquaint you—

[1] Letter Bk. 146, p. 288. [2] Ib., p. 301.

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"That his Majesty is graciously pleased to extend mercy to John Foxell, of Colonel Chudleigh's Regiment, condemned to die for desertion, and orders him to be whipped.

"The sentence of John Wilkes and John Warner, of Colonel Read's Company in the First Regiment of Foot Guards, is confirmed by his Majesty.

"But his Majesty, before he gives any directions as to the sentences of William Hicks of Colonel Frampton's Company of the First Regiment of Guards, and Richard Lacy of Colonel Digg's Company in the Third Regiment of Guards, expects to be informed of the reasons which moved the Court-martial to mitigate the punishment of such heinous crimes as Mutiny and cursing his Majesty, which the first is found guilty of, and likewise to know those particular circumstances which in the opinion of the Court-martial lessened the crime of Desertion the other is found guilty of.

"When I receive from you these necessary Informations to lay before his Majesty, I will acquaint you with his Majesty's further pleasure thereupon.

"I am, &c.,

"WM. PULTENEY."

"*Judge-Advocate-General.*"

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## ( XLIV. )

*Chapter* VIII., *par.* 47.

### LETTER FROM SECRETARY AT WAR[1] TO JUDGE-ADVOCATE-GENERAL, STATING THAT A COURT-MARTIAL HAD NO JURISDICTION IN CASE OF MURDER.

"SIR, "*Whitehall, 3rd October*, 1716.

"I am commanded in the absence of Mr. Pulteney to acquaint you that the inclosed proceedings of a Court-martiall of Brigadier Stearne's Regiment, held at Glocester the 20th of July last, whereby James Johnson was tryed and condemned for the murther of John Rowley, having been laid before His Royal Highness the Prince of Wales, he was pleased to refer the consideration thereof to the Solicitor-General, who having given his opinion that the proceedings of the Court-martiall being in time of peace and in the case of

[1] Letter Bk. 146, p. 258.

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murther (there being nothing of mutiny or desertion in the case) are null and void, the Court having no jurisdiction in time of peace of that crime, and to execute a person so condemned the law sayes would be murther. These proceedings, then, being thus void, he is of opinion that the person ought to be delivered over to the civill power, to be prosecuted according to the Common Law of England, the benefit of which no man can take from him.

"His Royal Highness is pleased thereupon to order and command that the said James Johnson should be immediately delivered over to the civill power to be prosecuted by the Common Law of England, according to the opinion of the Solicitor-General.

"I am, &c.,

"*Judge-Advocate-General.*" "J. MERRILL."

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## ( XLV. )

*Chapter* VIII., *par.* 48.

### REPORT OF LAW OFFICERS ON THE EXPEDIENCY OF SENDING AN OFFICER (AFTER PUNISHMENT BY A COURT-MARTIAL) FOR TRIAL BY CRIMINAL COURT.

IN January 1745–6, one Lieutenant Norford[1] was tried for feloniously stealing, and sentenced to be cashiered. The proceedings of the Court-martial were confirmed by the King, and sent to the Law Officers for their advice.[2]

"His Majesty being inclined that orders at the same time should be given that he should be delivered into the hands of a Civil Magistrate, in order to his being prosecuted in a legal way, I am directed to desire your Opinion whether it be advisable and legal for His Majesty to give directions accordingly, or whether after the punishment directed by the Court is inflicted, he should be left at liberty to be detained as prosecuted, or not, as the persons concerned shall think fit."

Their Report[3] was:—

"We are of opinion that it is legal, and considering the nature of the offences with which he is charged, that it is advisable that he

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[1] Letter Bk. 168, p. 256. [2] Ib., p. 249. [3] Bk. 721, p. 72.

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should be delivered into the hands of a Civil Magistrate, to be punished according to law."

"D. RYDER.
"W. MURRAY."

"23 *Feb.*, 1745."

## ( XLVI. )

*Chapter* VIII., *par.* 52.

### GENERAL ORDER (No. 522) OF THE COMMANDER-IN-CHIEF PROHIBITING SOLDIERS FROM ATTENDING ORANGE LODGES OR OTHER PARTY MEETINGS.

"*Horse Guards*, 31*st August*, 1835.

"LORD HILL has reason to apprehend, that the Orders prohibiting the introduction of Orange Lodges into the Army have not been duly communicated to the Non-Commissioned Officers and Privates, or, if communicated, that they have not been sufficiently explained and understood.

"His Lordship now refers Commanding Officers of Regiments to the Confidential Circular Letters of the 1st of July, 1822, and 14th of November 1829, upon the foregoing subject; and declares, that any Officer, Non-Commissioned Officer or Soldier, who shall hereafter institute or countenance an Orange Lodge, or any other Meeting or Society whatsoever, for Party purposes, in Barracks, Quarters, or Camp, shall be brought to Trial before a General Court-martial for disobedience of Orders.

"His Lordship, moreover, peremptorily forbids the attendance of either Officer or Soldier at Orange Lodges, by whomsoever, or wheresoever held.

"The present Order is to be read to the Troops periodically on the Parade with the Articles of War.

"By command of the
Right Hon. General LORD HILL,
*Commanding in Chief.*

"JOHN MACDONALD,
*Adjutant-General.*"

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# ( XLVII. )

*Chapter* VIII., *par.* 71.

## Reports[1] of the Judge-Advocate-General (Hughes) and Sir P. Yorke, as to the Trial of a Witness for Perjury before and by a Court-martial.

(1.) "Sir, "*Horse Guards, November 27th*, 1728.

"When I had the honour to lay the proceedings of the Court-martial for the tryal of Edward Beale, a private gentleman of the 4th troop of Horse Guards, before the King, I observed to His Majesty the notorious perjury of his accuser, Lamport. His Majesty was pleased to order that a General Court-martial should be held for the tryal of the said Lamport for the said perjury. The clause hereunder mentioned empowers a Court-martial to punish immorality, of which perjury is one of the greatest:—

"'That it shall and may be lawfull to and for such Courts-martial by their sentence or judgment to inflict corporal punishment not extending to life or limb on any soldier for immorality, misbehaviour, or neglect of duty.'

"When I had the honour to speak to you at Court, you were pleased to tell me that His Majesty had ordered Lamport to be turned out of the troop, and that His Majesty did not know what further could be done with him; upon which I mentioned to you that so notorious a perjury ought not to go unpunished; you were pleased to say that he ought to be indicted at common law. I think it my duty to lay before you for His Majesty's information, that as a Court-martial is not a Court of Record to any other Court but within itself, the evidence given in this Court on a perjury cannot be evidence to another; and as the Act of Mutiny and Desertion authorises a Court-martial to punish such an offence, I think it of the utmost consequence to His Majesty's service not to let such an offender escape; and it would be a heavy charge on the martial law if persons who give in evidence upon oath before a Court-martial when the life of men are under their consideration and judgment, if the evidence is proved perjured, it may be done with impunity; and should the said Lamport thus escape, and that be publicly known, as it must be from the very great attendance as there was at this tryal, I humbly conceive it would lay a stain of injustice on the martial law and be of evil consequence to

[1] Vol. 72, p. 23.

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His Majesty's service; wherefore I humbly submit to your consideration to move His Majesty to grant his warrant for a General Court-martial to try the said Lamport.

"I am, &c.,

"E. HUGHES.

"P.S.—I have the honour to enclose to you a copy of the Attorney-General's opinion agreeable to my own.

"E. HUGHES."

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(2.) "B., EVIDENCE IN A TRYAL BEFORE A GENERAL COURT-MARTIAL, IS GUILTY OF A NOTORIOUS PERJURY.

"UPON report thereof to the King, His Majesty was pleased to order him to be confined and tryed for that offence. There is a clause in the Act for punishing mutiny and desertion, giving power to Courts-martial by their sentence or judgment to inflict corporal punishment, not extending to life or limb, on any soldier for immoralities, misbehaviour, or neglect of duty.

"*Query.*—Whether this clause is not a sufficient authority to a General Court-martial to ground a tryal upon against B., and to punish him for perjury?"

"*Reply.*

"I conceive that if B. be a soldier in pay, this clause gives sufficient authority to a General Court-martial to try him for perjury committed in a Court-martial, and to inflict corporal punishment not extending to life or limb for that offence as an immorality or misbehaviour within the meaning of the clause.

"P. YORKE."

"26 *Nov.* 1728."

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(3.) REPORT[1] OF SIR D. RYDER AND SIR W. MURRAY ON THE SAME SUBJECT.

"BY the Act for punishing Mutiny and Desertion, &c., General Courts-martial are authorised to try and punish certain offences committed by any officer or soldier, and it is further enacted, 'That such Courts-martial shall have power and authority, and are hereby required, to administer an oath to any witness, in order to the examination or tryal of any of the offences that shall come before them.

"*Query.*—May a witness who shall commit wilful perjury before

[1] P. 107.

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a General Court-martial upon the tryal of any offence within their jurisdiction, be indicted for the same in the Courts of Common Law, and can he be convicted upon such indiction?"

"*Reply.*

"We are of opinion such a witness is indictable for perjury, and may be convicted, if the perjury is proved, in a Common Law Court.

"D. RYDER.

"4 *May*, 1753." "WILLIAM MURRAY.

## ( XLVIII. )

*Chapter* VIII., *par.* 73.

REPORT[1] OF THE ATTORNEY-GENERAL (1745) AS TO THE ARREST AS DEBTORS OF DESERTERS FROM THE ARMY.

"SIR, "20 *May*, 1745.

"Pursuant to the Lords Justices' commands signified to me by your letter of the 17th instant, I have considered that part of the Act which you refer to of the 17th year of his present Majesty, by which it is directed that no person enlisted as a Volunteer by virtue of that Act shall be liable to be taken out of his Majesty's Service by any process other than for some Criminal matter; and I am of opinion if such Soldier is arrested and carried to prison by virtue of civil process, the Court from whence the process issued will, upon his being brought up by *Habeas Corpus*, discharge him. But I think a Justice of the Peace cannot discharge him, much less can the Gaoler do it of himself. If the Soldier before his arrest had deserted, he could not at his own application be discharged, because he cannot for his own benefit aver he was then in the service of his Majesty.

"The proper method to be taken in that case in behalf of the Crown is to have him charged with a Warrant from a Justice of Peace for desertion, and to bring him up by *Habeas Corpus* into the King's Bench, and upon the return of the *Habeas Corpus* with that Warrant, the Court will, I apprehend, commit him to the Marshalsea, and upon proper application will order him to be delivered to the Officer of the Court-martial to be tryed.

"I am, &c.,

"*Edward Lloyd, Esq.*" "D. RYDER."

[1] Bk. 721, p. 71; see Bond *v.* Isaac, 1 Burr. Rep., p. 339.

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## ( XLIX. )

*Chapter* VIII., *par.* 100.

LETTER[1] TO GENERAL CARPENTER FROM THE SECRETARY AT WAR, AS TO THE TRIAL OF HALF-PAY OFFICERS BY COURT-MARTIAL AS DESERTERS.

"SIR, "*Whitehall, 16th November*, 1715.

"I have received the King's commands to acquaint you that pursuant to the power you have already received from His Majestie for holding Courts-martiall amongst the forces under your command, you are forthwith to call and assemble one, in order to try all such officers and soldiers as have deserted from His Service, and to put the sentence that passes thereon in execution without waiting or expecting further orders from hence; and I am particularly commanded by His Majestie to tell you that you must likewise immediately proceed to the tryall of any of the half-pay officers who were with the rebells which you find upon the list of half-pay, of which I send you an attested copy from my office; and that such officers be punished in the same manner as deserters from the standing forces, and to this end the Judge-Advocate-General hath orders to send one of his deputys. "I am, &c.,

"WILLIAM PULTENEY.

"P.S.—By the same express, I send a duplicate of this letter to Major-General Wills, lest you should not be at the head of the forces when this arrives."

*Note.*—The Warrant for holding Courts-martial was in the usual form, and was dated 14th March, 1815, under the countersign of Stanhope.—*Court-Martial Book;* see also Appendix, pp. 372, 373.

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## ( L. )

*Chapter* VIII., *par.* 111.

REPORTS OF THE LAW OFFICERS AS TO THE LIABILITY TO THE MUTINY ACT OF PERSONS EMPLOYED IN THE BARRACK DEPARTMENT.

"IN 1806, after the arraignment of a Barrack Serjeant before a Court-martial, a doubt was raised whether he was liable to the Act as a soldier. In previous cases of the trial of officers or non-

[1] Letter Bk. 146, p. 236.

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commissioned officers in the Barrack service, the accused had been either a half-pay officer or an out-pensioner of Chelsea, and, it was assumed, liable as such to the Act. The late Mr. Harrison, in advising on the case, wrote thus:[1]—'I apprehend that it is perfectly clear that a Barrack Officer or Serjeant committing an offence, in that capacity, is amenable to Military Law as a Barrack Officer *only*, and that he could *not* be legally tried as a half-pay officer or Chelsea out-pensioner for such offence. A half-pay officer or Chelsea pensioner, holding any office—the first a clerk and the other a doorkeeper of the War Office, or barrack officer, or any other such office—might, on such a construction, be tried for misconduct in his office by Military Law, instead of being tried by a Civil power.

"The only question here is, whether the nature of the appointment of this Serjeant, and his receipt of pay and other allowances, subjects him to Military Law: on which my opinion is, that the whole of the establishment, being both military in its object and details, and constituting a set of permanent camp quarters for the Army, all persons receiving appointments for the Barrackmaster-General, either as Barrackmaster or Barrack Serjeant, are subject to military orders of officers in military command there; and such appointment, and the receipt of pay under it, and other military allowance for beer, &c., subject the Serjeant to Military Law, and that he is amenable to a Court-martial; but the Law Officers, on this Opinion being submitted to them, wrote:[2]—'From the information which we have received of the nature of the appointment and duties of the Barrack Serjeant, we are of opinion that he is *not* liable, merely as such, and independent of any other commission or situation, to be tried by a Court-martial.'

"In 1811 the same subject came again before the Law Officers, under different circumstances. The Barrack Department had been made a Civil Department; and the Mutiny Act of 1809[3] amended by the introduction of words making 'persons employed in any manner in the care and distribution of any money, provisions, store, or forage,'[4] who might be guilty of embezzlement, liable to trial by a General Court-martial. 'These words (Mr. Harrison wrote) do not extend to Barrackmasters or their Serjeants, who are now completely civil officers and civil servants of a civil department, under the control of a Board constituted solely of civil officers under the Treasury, and having no connection with the military officers.

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[1] Bk. 1, p. 343. [2] Sir A. Piggott and Sir Sam. Romilly.
[3] 49 Geo. III., c. 12, s. 101. [4] Bk. A, p. 206.

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"The whole of the department and its business is now divested of its former military character, and is subject to civil control and account, and guarded by civil bonds and securities, and no other; and taking the whole of the clause, and its obvious intention and object, as well as the words, it is, I think, apparent that it extends only to the Commissariat Department, and that general words were used to prevent any difficulty as to control, remedy against, and punishment of, persons who might not be, unless by particular enactment, subject to military punishment, and who from various causes, and frequently from being out of the jurisdiction of English Courts, might have plundered with impunity, if not made amenable to the jurisdiction of a Court-martial, and subject to military control.

"The whole of the arrangement, connected with the administration of the Barrack Department, seems to me to make it quite clear that no control can or ought to exist over them in the employ of the public connected with barracks, as *the whole system of charge, issues, management, and account would be destroyed by any such interference*, which is obviously inconsistent with their duties as civil accountants, having charge of the details of a department which receives no orders or directions from any military authority, but looks only to the Lords of the Treasury for all duties connected with the administration of the office. Upon the whole, therefore, I am of opinion that the Mutiny Act does not apply to any of the officers or persons under the Commissioners for the affairs of Barracks, as receiving the salary attached in their offices, or incidentally concerned in the management of stores for which the first Commissioner for the affairs of Barracks is liable as a public accountant.

"The next question is, whether the Commissioners under the Sign Manual make them so liable? Upon which I am of opinion that they do not. They receive no military pay, and perform no military duty, and are not, as I conceive, within the Mutiny Act any more than an officer on half-pay, or one to whom a commission has been given and not returned; for no person can be liable for the breach of the civil duties of a civil officer, for which he is answerable to a regulated and acknowledged civil control, to a Court-martial, merely because he holds any such commission.

"This view was not concurred in by the Law Officers, who wrote[1]:—'We are of opinion that Barrackmasters who have military commissions with pay, and without any specified duties imposed upon them by virtue of these commissions, are not liable to be

[1] Jan. 1812. Gibb and Plumer.

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tried by Courts-martial *generally;* but that if these officers have 'the care or distribution of any money, provisions, forage, or stores, belonging to His Majesty's forces, or for their use, they are liable to be tried by a Court-martial for the offence described in the 103rd Section of the Mutiny Act.'"

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## ( LI. )

*Chapter* VIII., *par.* 112.

### The Second Clause of the Mutiny Act, 1868.

"All the provisions of this Act[1] shall apply to *all persons who are or shall be commissioned or in pay as an officer, or who are or shall be listed or in pay as a non-commissioned officer or soldier*,[2] and to all Warrant Officers, and to all persons employed on the recruiting service receiving pay and all pensioners receiving allowances in respect of such service, and to persons who are or shall be hired to be employed in the Royal Artillery, Royal Engineers, and to Master Gunners, and to conductors of stores, and to the corps of Royal Military Surveyors and Draughtsmen, and to all officers and persons who are or shall be serving on the Commissariat Staff, or soldiers in the Commissariat Staff Corps, and to officers and soldiers serving in the Military Store Department or in the Military Store Staff Corps, and to persons in the War Department who are or shall be serving with any part of Her Majesty's Army at home or abroad, under the command of any commissioned officer and (subject to and in accordance with the provisions of an Act passed in the sixth and seventh years of the reign of Her present Majesty, chapter ninety-five), to any out-pensioners of the Royal Hospital, Chelsea, who may be called out on duty in aid of the civil power or for muster or inspection, or who, having volunteered their services for that purpose, shall be kept on duty in any fort, town, or garrison, and to all Military Store officers and other civil officers who are or shall be employed by or act under the Secretary of State for War at any of Her Majesty's establishments in the islands of Jersey, Guernsey, Alderney, Sark, and Man, and the islands thereto belonging, or at foreign stations;—and all the provisions of this Act shall apply to all

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[1] 31 Vic. c. 14, sec. 2.

[2] The words in italics show the persons originally liable; and the words printed in Roman letters, those persons that have been subsequently added.

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persons belonging to Her Majesty's Indian forces who are or shall be commissioned or in pay as officers, or who shall be listed or in pay as non-commissioned officers or soldiers, or who are or shall be serving or hired to be employed in the Artillery or any of the trains of Artillery, or as Master Gunners or Gunners, or as Conductors of Stores, or who are or shall be serving in the Department of Engineers, or in the corps of Sappers and Miners or Pioneers, or as military surveyors or draughtsmen, or in the Ordnance or Public Works or Commissariat Departments, and to all Storekeepers and other civil officers employed under the Ordnance, and to all Veterinary Surgeons, Medical Storekeepers, Apothecaries, Hospital Stewards, and others serving in the Medical Department of the said forces, and to all licensed sutlers and all followers in or of any of the said forces."

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## ( LII. )

*Chapter* VIII., *par.* 126.

REPORTS OF SIR J. WILLES ON THE JURISDICTION OF A COURT-MARTIAL TO TRY FOR OFFENCES WHERE THERE IS NO COURT OF CIVIL JUDICATURE.

(1.) *Case of the two Mercers at Placentia, for killing John Sullivan, a Soldier, with the Attorney-General's Opinion. 26th February,* 1733.

"THAT a sudden quarell happened between Lawrence Sullivan and John Mercer, two soldiers, at Placentia, in Newfoundland, in the house of Corporal Robert Mercer, his father (all of them being intoxicated with liquor); on which Robert Mercer the father and his son turned Sullivan out of the house. Afterwards he attempted to gett into the house again, and being shutt out and refused entrance, threatened to beat both father and son, and challenged them to fight; on which they both run out of the house, and presently afterwards Sullivan was found with a wound in his left pap about two inches deep and dead; on which both father and son were committed to prison at Placentia by the Lieutenant-Governour and Commander there, in order to be tryed for the said offence by a Court-martial, pursuant to the last Article of Warr, viz.:—

"'That in the garrison of Gibraltar, island of Minorca, forts of Placentia and Annapolis Royal, where the King's forces are, or in any other place beyond the seas, to which any of the King's troops may be commanded, and where there is no form of His Majesty's



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civil judicature in force; the Governour or Commanders respectively are to appoint General Courts-martial to be held, who are to punish criminals by their sentence for crimes punishable by the known laws of this land, as hath been practiced heretofore and authorized by former Articles of War.'

"That for want of a sufficient number of officers in the fort of Placentia, the two Mercers continued in prison until the month of August last; in which time some doubts did arise whether this Article of War did impower a Court-martial to try this offence, and if it did, whether this Article was well grounded on the Act of Parliament for the prevention of mutiny and desertion, or any other law; it being alledged that the said Act was only for the better government of the King's forces, and bringing offenders against such government to justice.

"But to obviate all difficultys that might arise about the Court of Judicature, the Lord Muskerry, who had the command of a man-of-war on that station and governour of the island, arriving there about August last, took upon him the government of the fort (as all other commanders of men-of-war stationed there do during their stay), first seized and sold all the goods and effects of both the Mercers as forfeited for the said offence, and then sent the men over to England in chains, to be tryed; who are now in Exeter goal for the aforesaid murder.

"The governor, who is the prosecutor, and the witnesses are all in town.

"*Query* 1*st*.—Whether the Mercers (father and son) can or could be legally tryed for the above said offence at Placentia, in regard as the offence with which they are charged is capital they ought to be tryed by a General Court-martial, which the Act against Mutiny and Desertion expressly mentions shall not consist of a less number of commission officers than thirteen, and the president thereof to be a field officer, or the officer commanding-in-chief the garrison; when as there is but one company of foot in that place, they could not have officers sufficient to compose such a Court-martial?

"*Query* 2*nd*.—As the Mercers are brought over to England, and now confined in Exeter Gaol, can they be tried there by a Court-martial, or at Southampton, or at the Old Baily; all the witnesses of the fact being now here. And if not, whether they may not be sent back either to Canso or at Annapolis Royal, and be there tryed for their offence, in either of which garrisons there are a sufficient number of commission officers of the same regiment to compose a General Court martial; or, as the fact was done at Placentia, whether they must be tryed there, and officers sent thither from

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Canso and Placentia to make up the number required by the Act against Mutiny, &c. ?

"*Query* 3*rd.*—Whether the commander of any of His Majesty's ships of war during his stay on the station of Placentia, or the governor of that place, or any other person, hath power *to exercise royal or civil jurisdiction* so as to seize goods before the offence be tryed, and the offender legally convicted, or to remove men out of confinement abroad and bring them over hither ?

"*Answer to Query* 1*st.*—I am of opinion that the Mercers could not be legally tryed for this offence at Placentia; there being no form of civil judicature there, and there not being a sufficient number of commissioned officers to constitute a General Court-martial.

"*Answer to Query* 2*nd.*—I don't apprehend that the Mercers can be tryed by a Court-martial in England, or in any other place, except where the fact was committed. But as they are now in England, they may be legally tryed here, in such manner as is hereafter mentioned.

"By the 33 Henry VIII., c. 23, they may be tryed in any county in England by a special commission of Oyer and Terminer appointed by His Majesty for this purpose, according to the directions of that Act.

"But the 10 & 11 William III., c. 25, directs a plainer and easier method, and adapted to this very purpose. For by s. 13 of that Act, it is enacted that all robberies, murders, &c., and all other capital crimes whatsoever, at any time after the 25th of March, 1700, done and committed in and upon the land in Newfoundland, or in any of the islands thereunto belonging, shall and may be inquired of, tryed, heard, determined, and adjudged in any shire or county in England, by virtue of the King's commission or commissions of Oyer and Terminer, and gaol delivery, or any of them, according to the laws of this land used for the punishment of such robberies, murders, &c., done and committed within this realm. By virtue thereof of this Act, the Mercers may be tried at the next assizes at Exeter by the Judges that go that circuit, who have both a commission of Oyer and Terminer and gaol delivery.

"*Answer to Query* 3*rd.*—I think that the Lord Muskerry, as Governor of Placentia, had no authority to sell and seize the goods and effects of the Mercers as forfeited for the said offence before they were tried and legally convicted. But I think he did very right in bringing the Mercers over hither in custody; for if the governors of such places had not an authority to bring over such offenders, the said Act of the 10 and 11 William III. would be of no effect, and I think, considering the nature of the case, he might legally



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have secured all their goods and effects, and have brought them over thither along with them.

"J. Willes."

"*Feb.* 26*th*, 1733."

(*2nd Case.*) *Extract of a Letter from Lieut.-General Sabine, dated at Gibraltar, 7th March,* 173¾, *upon Coining Money at Gibraltar.*

"I have two soldiers now in prison for coining pieces of eight and other Spanish silver current in this place, and it will be of great service, as well to the inhabitants as for the encouragement of our Coast traders to have examples made of them by inflicting on them the severest punishment the laws direct in such cases. But as I have no Act of Parliament relating to coining, am in doubt if their crime be capital; the money they have coined not being that of England, and this place out of the Kingdom. Therefore desire that such laws as relate thereto may be sent me, for I shall keep them in confinement till I receive your answer concerning the affair with what instructions you shall think proper for my conduct therein. It is a doubt with almost all the officers of the garrison whether a Court-martial has power to try inhabitants or others in this place (not military persons) who are guilty of any capital crimes punishable by the laws of England with death, and take the last paragraph of the 45th Article of War to relate only to such as are in His Majesty's service. For my part, I have hitherto been of opinion that by virtue of that Article all our laws are in force here, and in all other military Governments abroad where no form of a Civil Judicature is established; and that all persons, military or otherwise, and all crimes of what nature soever, are punishable in such places by a Court-martial; but without the sanction of a higher authority I shall not, nor I fear be able to convince these gentlemen of their mistake, and bring them over to my way of thinking; I shall therefore be very glad to have the Attorney or Solicitor-General's opinion on these cases, and if you think it not improper, should be pleased to have His Majesty acquainted therewith."

*The Attorney-General's Opinion.*

"By the statute 1 Mary, c. 6, the forging and counterfeiting any kind of coin of gold or silver current within this realm, though not the proper coin of this realm, is high treason in the principal offenders, their councellors, procurers, aiders, and abettors.

"By the statute 1 & 2 Philip and Mary, c. 11, the bringing from parts beyond the sea into this realm, or into any of the dominions of the same, any false or counterfeit coin of money being current

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within this realm knowing the same to be false and counterfeit to the intent to utter or make payment with the same within this realm, or any of the dominions of the same, by merchandizing or otherwise, is high treason in the principal offenders, their councellors, procurers, aiders, and abettors.

"By the statute 14 Eliza., c. 3, the falsely forging or counterfeiting any kind of gold or silver which is not the proper coin of this realm, nor permitted to be current within this realm, is misprision of high treason in the principal offenders, their procurers, aiders, and abettors.

"The offence committed by the said two soldiers seems most properly to fall within the first of these statutes, and to be thereby made high treason as Gibraltar is now part of His Majesty's dominions. But I do not think it a very clear point.

"I am of opinion, that by the last paragraph of the 45th Article of War, the said two soldiers may be tryed for this offence by a General Court-martial at Gibraltar, who must govern themselves by the said statutes. But if any of the inhabitants or others in that place (being not military persons) should offend in the like manner, I am of opinion that they cannot be tryed by a Court-martial, though there is no form of a Civil Judicature there established. For though the words of that paragraph seem to be general, and to extend to all criminals, yet, as they refer to the 16th Article, cannot be taken in a more extensive sense. And the rather since the Articles have their authority only from the Act against Mutiny and Desertion, which plainly relates only to military persons. Besides, I do not think that the laws of England extend to the inhabitants of Gibraltar, except such Acts of Parliaments (if any) in which they are expressly named.

"By the Statute 33 Henry VIII., c. 23, persons guilty of treason, petty treason, and misprisions of treason, in any place whatsoever within or without His Majesty's dominions, if sent over hither, may be tryed in England by a Special Commission of Oyer and Terminer to be appointed by His Majesty for that purpose according to the directions of that statute; and I should think it most advisible to pursue this method in the present case that the matter in question, which concerns the lives of two persons, and does not seem to me very clear, may be determined in the most solemn manner.

"J. WILLES."

"*July* 12*th*, 1734."

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# ( LIII. )

*Chapter* VIII., *par.* 126.

## Report of Sir D. Ryder and Sir W. Murray upon the Trial by Court-martial of Clippers and Coiners in Flanders.

(1.) *Extract from a Letter to the Right Hon. the Earl of Harrington, His Majesty's Principal Secretary of State, from Lieut.-General Hawley, dated at Ghent, the 3rd of March,* 1745, *N.S.*

"This garrison has had numbers of false guineas, and most of the ducats clipt all this winter, and two days ago there is a sergeant of the Guards and an Irish sutler detected. They are now before a Court-martial, but there is no Article of War to try them by as there was last war and in King William's war.

"I find in the Duke of Marlborough's Orders, of which I have a copy during all his time, precedents where an execution is ordered at the head of the English camp to hang the coiners.

"And in King William's time I saw two officers executed at Brussels by sentence of a Court-martial for coining, one of them, if not both, field officers; old General Wood was President, and this Lord Lifford must remember.

"The Court-martial is not over to-day as I thought it would be. I believe I must send it over to the Secretary-at-War next post (by what I hear of the examination) for the Attorney-General's opinion.

"Some of the magistrates who were there to hear, tell me that if I will give these two men up to the laws of this country, they will be boiled in oil according to the law."

(2.) "Sir, "Ghent, *March 6th*, 174$\frac{4}{5}$.

"After many complaints of the ducats being clipt and some false guineas going about this garrison, we have after a long search detected a serjeant of the Guards and one Irishman; but as the Court-martial think the Articles of War deficient, I here send you their opinion, for I don't know what to do with them, therefore I must desire you will let me know His Majesty's pleasure. It appears very plain they are two old offenders this way, and you will see by the tryal there is one William Hanah, an Irishman who lives at Canterbury, who seems concerned in this affair. I have also acquainted my Lord Harrington with this, but would not then

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tell him of this Hanah, who seems to be a runner of lace and linen from this country, where he has constantly come for several years. He is an Irishman, and married a shopkeeper's daughter at Canterbury, who has since taken him partner with him there. As he has but an indifferent character here, the law in England will best know what to do with him. What I desire to know is, whether a Court-martial has not power to pass sentence upon the two prisoners here by the 46th Article of War (considering there are four precedents in this country), or whether I must give them up to the civil law of the country, who will boil them in oil, or lastly, what I am to do with them. This Serjeant Bell was in the regiment I now command about fourteen years ago, and was suspected to be a coiner then. He has also been in the French service since that, and, as we are told, deserted them for fear of being hanged for the same crimes. He has been about twelve years in the Guards, and it is said he is worth 1700*l.* in the Stocks. This affair has already caused a great inconvency and loss, for now the townspeople weigh all the ducats.

"I have ordered the Serjeant to be broke out of the Guards; so as they are both now a sort of state prisoners, I hope for your answer soon what I am to do.

"And you will oblige, Sir,

"Your obedient, humble servant,

"H. HAWLEY.

"The Procurator-General of Flanders has now just been with me to desire that William Hanah may be sent over here to them, according to the Law of Nations, as he says. My answer was that I would write about it."

(3.) *Attorney and Solicitor Generals' Opinion about Clippers and Coiners.*

"SIR, "15*th March*, 174$\frac{4}{5}$.

"In obedience to His Majesty's commands, we have considered the inclosed papers which you lately transmitted to us, relating to the two persons concerned in clipping ducats at Ghent, and the doubt which is conceived by the Court-martial of their jurisdiction.

"We are of opinion that the 46th Article extends to the crime of clipping, and gives them authority to try by martial law all persons who are guilty or accused of it, provided the persons are subject to the Articles of War.

"And therefore as to the serjeant, we are of opinion he may be

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tryed for it by a Court-martial. But we have more doubt as to the sutler, who being neither officer nor soldier, is not within the words of the 47th Article, which describes expressly the persons by whom the foregoing Articles are to be observed. Whether they are within the meaning, will depend on the usage in the Army, and is best known by those who are conversant in the proceedings of a Court-martial, and the practice of the Army under Articles of the like kind.

"Though we think coining and clipping ducats are within the general words and meaning of the 46th Article, yet as former Articles of War have had this crime particularly specified, and doubts have been conceived upon this head, we think it would be adviseable in the next Articles to follow the precedents in the former war, and mention this crime by name.

"We are, Sir,

"Your most obedient, humble servants,

"D. RYDER,

"*Right Hon. Sir William Yonge.*" "W. MURRAY."

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## ( LIV. )

*Chapter* VIII., *par.* 126.

REPORT OF THE LAW OFFICERS AS TO THE QUESTION OF THE LEGALITY OF APPREHENDING A DISCHARGED SOLDIER IN ENGLAND, AND OF SENDING HIM ABROAD FOR TRIAL BY A COURT-MARTIAL FOR AN OFFENCE THERE COMMITTED, WHILE HE WAS AMENABLE TO THE ARTICLES OF WAR.

"WE are of opinion that Colley cannot be taken up in this country, and sent to France for the purpose of being tried by a Court-martial for the murder there committed.

"The 12th Section of the 31st Car. II, chap. 2, enacts that no Inhabitant or Resident of England shall be sent Prisoner to any place beyond the seas, *within* or *without* his Majesty's Dominions, and every such Imprisonment is enacted to be illegal. The 16th Section qualifies this general clause, by providing that persons who have committed any capital offence in Scotland or Ireland, or the *Foreign Dominions of the King*, where they ought to be tried, may be sent to such place, *there* to receive trial; but this is only an exception where the offence has been committed, and the offender is to be tried

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within some of the King's Dominions, and therefore the present case does not come within the proviso of such 16th Section. There is one case in 3rd vol. Keble's Reports, p. 785, of refusing to bail a man taken up for a murder committed in Portugal. That case, however, is very inaccurately reported; besides which, it was in the 29th year of Car. II., two years before the Habeas Corpus Act was passed. The subsequent cases of Colonel Lundy, 2 Ventris, p. 314, and of Rex *v.* Kimberley, 2 Strange, p. 848, were cases of offences committed in Ireland, which is expressly within the provision of the 16th Section of the Habeas Corpus Act.

"It is also to be observed that the 37th Geo. III, chap. 97, sect. 26, specially provides for the Arrest and Deportation for Trial of persons who may have committed certain Offences in the United States of America, and are afterwards residing in this country; which proves that, without some special Enactment, it could not be done.

"The 4th Article of the 24th Section of the Articles of War can only apply to such persons as are in the foreign country when arrested and brought to trial; but would not justify a violation of the general enactment of the Habeas Corpus Act, by arresting them here, and sending them abroad for trial.

(Signed) "W. GARROW.
"S. SHEPHERD."

"*Lincoln's Inn*, 21*st Jan.*, 1817."

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## ( LV. )

*Chapter* VIII., *par.* 126.

### REPORT[1] OF MR. D. STRANGE AND SIR J. STRANGE AS TO TRIAL IN ENGLAND OF A DESERTER FROM FLANDERS.

"SIR, "13 *Sept.* 1742.

"In humble obedience to His Majesty's commands signifyed to us by his letter of the 7th inst., transmitting to us copys of a letter from the Judge Advocate to His Majesty's forces in Flanders, the New Articles of War for the government of them, and His Majesty's Warrant, dated 16th July last, for holding Courts-martial according to those Articles, and desiring our opinion upon the subject matter of the Judge Advocate's letter, we have taken the same

[1] Bk. 721, p. 57.

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into consideration. That letter relates to two questions:—1st. Whether a Court-martial, constituted according to His Majesty's Warrant, can legally take cognizance of crimes committed before the time the New Articles of War were in force. 2nd. Whether deserters, who left the regiments when in England, can be legally tryed in Flanders for that offence.

"As to the 1st. The Articles being referred to by the Warrant, and annexed to it relating to future crimes only, we are of opinion that crimes committed before the Articles were in force, cannot legally be tryed by a Court-martial founded on that Warrant.

"As to the 2nd. Considering that the Articles are confined to the forces employed in foreign parts, and the power of appointing Courts-martial is granted to the Commander-in Chief of the forces in Flanders for their better discipline there, we are of opinion deserters, whilst in England, are not tryable in those Courts.

"We are, &c.,

"D. RYDER.

"J. STRANGE."

## ( LVI. )

*Chapter* VIII., *par.* 126.

### REPORTS OF SIR D. RYDER AND SIR CHARLES GOULD AS TO TRIAL OF DESERTERS IN ONE COLONY BY A COURT-MARTIAL FORMED IN ANOTHER COLONY.

(1.) "*Case.*

"THERE having been a mutiny and desertion in and from a garrison called Oswego, in the province of New York, in which province there is not a field officer to preside, nor a sufficient number of other officers to compose a General Court-martial, and the Lords of Trade thinking it of the utmost importance to His Majesty's service that the ringleaders and offenders in the above-mentioned mutiny and desertion should be brought to justice—

"*Query 1st.*—Whether the ringleaders and other offenders, with such persons whose evidence may be necessary, can be legally sent from New York to Halifax in Nova Scotia, where there are field officers and sufficient numbers of other officers to compose a General Court-martial for their trial?

"*Query 2nd.*—Whereupon their being delivered over to the commanding officer in Nova Scotia, he can legally appoint a General

[1] Bk. 721, p. 102.

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Court-martial, and such Court-martial proceed on their tryal for the offence committed in the province of New York?

"*Answer to both Queries.*

"The matter may depend on the usage and practice of the army, which is not stated, and I am not sufficiently acquainted with to give a certain opinion upon; but the clause in the Mutiny Act, which provides for the tryal of deserters from His Majesty's service beyond sea who escape into England by a Court-martial here as if the offences had been committed in this realm, conveys a strong implication that the tryal of military offences is local in some degree in the sense of the legislature, and unless the usage of the army has been clearly different, I apprehend that these offenders cannot be carried to Nova Scotia and tryed there.

"D. RYDER."

"10 *Jan.* 1753."

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## (2.) REPORT OF SIR CHARLES GOULD.

"I am humbly of opinion the offenders under these circumstances (attended with such witnesses as are material for their defence, as well as those in support of the charge) may be legally sent to Halifax, and be there tryed. For they have offended, and the law operates upon them, not as inhabitants of this or that particular district, but as soldiers in His Majesty's service, and as such having no settled commorancy; and His Majesty's forces may therefore be considered, however dispersed, as members composing one body regulated by peculiar laws, and altogether distinct from the province on which they are eventually stationed. And the jurisdiction which General Courts-martial exercise in the tryal and punishment of military offences (whether it be under the Mutiny Act or Articles of War) is given in general words, without restraining such tryal to the particular province, garrison, or corps in which the offence is committed, so that any officers in His Majesty's service, and wheresover stationed (regard being had to the due number, rank and quality) appears to me capable of composing a Court for this purpose. As this is neither repugnant to reason and equity, nor restrained by any express words, the doubt, I conceive, must arise from the 57th clause of the Mutiny Act, which provides for the tryal of deserters from His Majesty's service beyond the seas, who escape into Great Britain or Ireland, by Court-martial, as if the offence had been committed within this realm.

"From whence it is presumed, that without this clause an offence

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committed beyond the seas had not been cognizable here, and by parity of reason, an offence committed in one province beyond the seas does not fall within the cognizance of a Court-martial sitting in another province. I apprehend this objection may be taken off, by considering that every military offence within the kingdoms of Great Britain and Ireland is punishable only as far as the same comes within the description of the Mutiny Act and Articles of War exactly consonant thereto, whereas the Articles for places beyond the seas have a greater latitude and are in great measure grounded on the prerogative of the Crown. An offence, therefore, against the Articles for Foreign Parts, not being originally within the purview of the Act, could not become so by the escape of the offenders into the realm; and Courts-martial here deriving their authority from the said Act, could not take notice of an offence against those Articles. It became therefore expedient to direct in what manner such offenders should be proceeded against, and it hath pleased the Legislature to provide that they *shall be* tryed (not by the Articles in force in the parts from which they deserted) but *as if the said offence had been committed within this realm.* And the place which this clause has in the Act seems to me favour this opinion, as it immediately follows the distinction taken between the Articles of War for Great Britain and Ireland, and those for places beyond the seas. I remark the penning of the clause, because it seems to point more directly at the manner than the place of their tryal; for Ireland is not repeated, whereas, if the clause be intended only to confer an authority for trying in either kingdom offences committed beyond the seas, the sentence is by that omission incompleat. And I take it that two provinces or districts beyond the seas stand exactly upon the same footing with the two kingdoms of England and Ireland, and there are not wanting instances of desertion, &c., committed in one kingdom and tried in the other, although not provided for by this clause, nor did I ever hear any doubt of the legality.

"I apprehend, too, as the question arises merely upon a construction by implication, it is reasonable to urge the many inconveniences (among which the present would be a notable instance) as arguments against that construction. And as I see no injury arising to the prisoners; on the contrary that their confinement is always likely to be shorter if removed to the nearest garrison to be tryed, than if a sufficient number of officers were to be sent from the said garrison to them (not to insist further on the utility or inconvenience accruing to the service from the one and the other construction) I am humbly of opinion the method proposed is consistent with law.

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"And I think, by virtue of His Majesty's Special Warrant (for the General Warrant, as I conceive, may not extend to this case), the commanding officer in Nova Scotia may appoint a General Court-martial, and such Court will be well warranted to proceed on the tryal of the offenders.

"CHARLES GOULD."

"*Judge-Advocate's Office,*
*26th January*, 1753."

"Since writing the above I have met with one case, which I think somewhat pertinent to the present question, viz.:—Four soldiers of the Regiment of Foot, then commanded by the late Lieut.-General Phillips, being of the number taken at Canso, and carried to Louisbourg, there deserted, and inlisted themselves on board a French privateer, and being afterwards taken, were conveyed to Annapolis Royal in Nova Scotia, and there tryed by a General Court-martial on the 27th July, 1744.

"C. G."

(3.) FINAL REPORT OF THE ATTORNEY-GENERAL.

"Upon perusal of a paper laid before me, with what the Deputy Judge Advocate has wrote concerning the usage of the Army and the nature of this case, I think the offenders may be sent with the witnesses from New York to Halifax, to take their tryal there before a General Court-martial, constituted, according to the Act against Mutiny and Desertion, by Special Warrant from His Majesty, in case (as it is stated by the Judge Advocate) His Majesty's General Warrant to the commanding officer in Nova Scotia does not extend to authorise his appointing of such a Court.

"D. RYDER."

"*29th Jan.* 1753."

## ( LVII. )

*Chapter* VIII., *par.* 129.

REPORT OF THE LAW OFFICERS AS TO HOLDING COURTS OF ENQUIRY UNDER THE AUTHORITY OF THE MUTINY ACT.

"*Case.*

"IN the course of the late War, John Bradshaw, late a Captain in the 60th Regiment, and several other Persons, were employed by his Majesty in raising levies for general Service.

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In the Execution of his Majesty's Orders for raising such Levies by Captain Bradshaw and others, it has lately been discovered that great abuses and irregularities have been committed, as well at the places appointed in Ireland for the Inspection and approval of their Recruits as in the preparation and Production of Vouchers for obtaining Issues of Public Money on Account of such Levies; and for supporting the Charges made in the Accounts respecting the same, various instances of such abuses and irregularities in the case of the Levies undertaken by the said John Bradshaw, have been alledged.

"For the purpose of developing the several Abuses above stated, and for discovering and pointing out the Individuals by whom such Abuses and Irregularities have been committed, it is proposed that his Majesty should, under the authority of the Mutiny Act, *by his Royal Sign Manual*, order a general Court-martial to be assembled, consisting of a sufficient number of Officers of a Competent Rank and Quality, authorizing and empowering such Court-martial to hear and examine such Witnesses as may be able to give Testimony, and all such matters and Informations that shall be brought before them relating to the several Levies undertaken to be raised by the said John Bradshaw and others for general Service, and to report for his Majesty's Consideration a Special State of the facts as found by them in evidence, and to particularize such Person or Persons whom they shall conceive to be implicated in any such Abuses and Irregularities: the said Court-martial, in the course of their investigation, taking care not to press questions on any Witness which may tend to criminate himself, as their proceedings may lay a foundation for calling upon the Persons themselves who shall appear by such report to have been chiefly implicated in the transactions complained of, to answer for their Conduct upon such specific Charges as may be referred to another Court-martial, to be thereafter appointed by his Majesty expressly for that purpose. *There are two instances of Courts-martial being appointed for enquiry only.*

"In the time of Queen Anne, it having been represented to her Majesty that there were some Accounts relating to the Detachment of the second Regiment of Foot Guards, which served in Spain in the year 1707, then unsettled, which would require the authority of a Court-martial to adjust and determine, and Her Majesty being desirous that the said Accounts should be adjusted and determined, by Royal Sign Manual, dated 21st March, in the 11th Year of her Reign, ordered that a Court-martial should be forthwith held on the Occasion, and thereby authorized and empowered the said Court-martial to hear and examine all such matters and Informations

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relating to to the said Accounts as should be brought before them, and to proceed in determining and giving final Sentence therein, according to Equity and Justice, by which Sentence all the Officers and others concerned should strictly abide and be determined.

"In the Year 1714 Captain Wm. Needham represented unto his Majesty King Geo. the 1st, that, being exempt in the 1st Troop of Horse Guards, Commanded by Lord Ashburnham, and rendered incapable of further Services, he obtained leave of Queen Anne to dispose of his Commission of Exempt, which cost him £2300, in order to make a Provision for his Wife and Children; and that he thereupon consented to a proposal made to him by the approbation of Lord Ashburnham, by which he was to have for his Commission the late Queen's Warrant for 8s. a day or Half Pay as Captain of Horse, and £1300 to be paid to him in the following manner, viz., by a Mr. Julian, a Brigadier in the Troop, £300 to be Exempt; by Mr. Bation, Sub-Brigadier, £300 to be Brigadier, and £700 by Mr. Ashburnham, to be Sub-Brigadier. That upon the Agreement, Queen Anne's Consent was to be obtained for Captain Needham to be put upon Half Pay, and the several Commissions were signed, which the Clerk of the Troop was ordered to detain in his hands, until the Terms of the agreement were executed. And it being further represented to the King that there was no Warrant obtained for Captain Needham's Half Pay, by reason of the Queen's demise, yet Mr. Julian got the Commission of Exempt out of the Clerk's hands, contrary to the said agreement and Lord Ashburnham's express Orders, and not only refused to deliver up the same according to orders, but insisted that, having his £300, part of the £1300 ready to Pay, he had a right to the said Commission of Exempt. *And his Majesty being willing that the matter should be enquired into by a Court-martial, by his Royal Sign Manual, bearing date the 25th Nov.*, 1714, *ordered a Court-martial to be forthwith held, and thereby authorized and empowered the said Court-martial to hear and examine such matters and Information as should be brought before them touching Captain Needham's representations, and to state the fact as it should appear to them*, and to report the same to his Majesty, with their opinion, what was fitting to be done therein, in order to his Majesty's signifying his Pleasure thereupon.

"These appear to be precedents sufficient to warrant the Constituting a General Court-martial for investigating the several Abuses and Irregularities complained of. And it is proposed that His Majesty should grant a Commission under his Royal Sign Manual for holding a General Court-martial, in the form of a Warrant left herewith, to hear and examine all matter and informations that shall be brought before them relating to the several Levies

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undertaken to be raised by the said John Bradshaw, and others, for General Service, and to report for His Majesty's Consideration a special State of the Facts as found by them in Evidence, and particularize such Person or Persons as they shall conceive to be implicated in any such Abuses in the manner and under the Precautions hereinbefore mentioned.

"Recourse has been had to the Books kept in the Office of the Judge-Advocate-General, but they do not furnish any Precedent *as to the mode of conducting such an Investigation as is now proposed.* The nature and object of the Enquiry being in many respects similar to the Business of a Grand Jury, it has been suggested that the Court-martial might proceed in the Examination in the same manner, namely, with shut doors, and that the testimony of the several Witnesses should be taken apart from the knowledge of the others, and no part disclosed until the Court should make their report. *But several Doubts having arisen, as well respecting the legality of a Court-martial, not having for its object the Trial af any Person, but only an enquiry into Facts, with a view of putting persons on their Trial, if there shall appear sufficient cause to the Court-martial,* also, if such Court shall be appointed, as to the course of Proceedings of such Court-martial:

"The Secretary at War therefore hath directed this Case to be laid before the Attorney and Solictor-General for their opinion:—

"*Firstly.*—Whether such a Court-martial as is proposed, although no Person is put on Trial, facts alone being immediately in question, can be legally appointed?

"*Secondly.*—Whether, if such a Court-martial is appointed, it should be an open Court or not?

"*Thirdly.*—Whether, if an open Court, any Person implicated should have liberty to examine Witnesses, or cross-examine those produced in support of the Charges brought before the Court-martial?

"*Fourthly.*—Whether, as Courts-martial are prohibited from trying and punishing Offences committed beyond the Term of three years, the Court-martial in this Case, if appointed, should be restrained from making their Inquiry beyond that Period?"

"*Report of the Law Officers.*

"The strong inclination of Our opinion is, that there is no Authority for the appointment of a General Court-martial for such purpose of Enquiry as is here suggested. If any such Authority exists, it must be under the Mutiny Bill, and must be found under some of its Provisions; and the Section which is mentioned in the

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Case, viz., the 5th, is clearly that which gives the authority, if it is given at all. The wording of that Section affords, it must be admitted, some colour at first to suppose that it was the intention of the Legislature to give his Majesty authority to appoint, under his Sign Manual, general Courts-martial different from those which by his warrant he may authorize General Officers to convene, because the Description given to the first is that they are to be held in like manner *as has been heretofore used*, whereas the latter are to be convened *for the Trial of Offences*. And the same distinction, from nearly similar observations, may be supposed to be traced between the General Courts-martial which the Chief Governors of Ireland may, under the same Section, be empowered to grant, and those which, under their Warrant, any General Officer in Ireland may be authorized to convene; and it may fairly be argued that the Reference to the manner heretofore used opens to the enquiry as to what that manner was, and there be no trace to be found of any such General Court-martial having been held, either anterior to the time when the Mutiny Act assumed its present shape, or subsequent to it, except these two instances in Queen Anne's and Geo. 1st's Reign, yet there are sufficient to point to a manner which, though forgotten now, might have been familiar then. But we think, from a view of the whole of that Section, together with the other provisions respecting General Courts-martial in the Mutiny Act, that there is not sufficient ground to maintain the authority of appointing Courts-martial, except for the purpose of trying Offenders, which such Courts-martial may be specifically charged to try. In the first place, it is to be observed that the Section which is under Examination ends thus,—'all which General Courts-martial shall be constituted, and shall regulate their Proceedings according to the several Provisions hereinafter specified.' Connecting all the Courts-martial, as well those directly appointed by the King as those derivatively appointed by him through the General Officers, under the same Provisions, at least, with respect to their Constitution, and the regulations which are to govern the Proceedings.

"The very first Provision or Regulation which follows in the 6th Section is, that 'it shall be *lawful to and for such Courts-martial*' —referring necessarily to all those General Courts-martial which the preceding Section gave authority to appoint—'*by their Sentence or Judgment to inflict Corporal Punishment* not extending to life or limb on any Soldier for immoralities, misbehaviour, or neglect of Duty.' It seems then, of course, that they must be Courts-martial for the Trial of such Offences, at least, as they are there enabled to punish, for, without some special Provision, indeed, it is not to be conceived that there can be a trial unless the individual tried be brought before



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the Court which is to try him by some specific Charge. The 11th Section giving the power to administer Oaths has the words, 'in order to the *examination* or *trial* of any of the Offences that shall come before them;' from whence, if it stood alone, no doubt it might be contended that the Legislature had in view an examination of an Offence which was not a trial of an Offence; but the Section before alluded to, which empowers all the Courts-martial to punish, seems to preclude this construction from being put upon those words, or rather this inference from being drawn from them.

"The next points to be observed upon are the Oaths to be taken by the members. The first is, '*You shall well and truly try and determine*,' &c. This necessarily seems to point to a trial, and not to an enquiry or presentment; as does also the following, where the member swears that he will '*duly administer Justice*.' It is true that the 12th Section, in which these Oaths are contained, begins with providing, 'That in all Trials by General Courts-martial to be held by virtue of this Act, every member at such Trial, &c., shall take the following Oaths;' and therefore it may be said that these Oaths are only for such Courts-martial as are held for the Trial of any Offender, and do not apply to those which are only holden for enquiry. But if this Oath does not apply to such Courts-martial as are held for enquiry, there is no Oath which does; and it can hardly be supposed that the Legislature, in instituting a Court of such importance in the nature, in some degree, of a Grand Jury, should intend that they should proceed without taking any Oath at all; and therefore the argument seems to be extremely strong, that, as the only Oath to be administered to the Member of a Court-martial is an Oath which only *respects a trial*, so the only business upon which they are to be engaged must be that of a trial also.

"It is further observable that the 15th Section gives the Party tried by any General Court-martial a right to a Copy of the Sentence and Proceedings, and the 16th Section requires the Person officiating as Judge-Advocate at any General Court-martial to transmit the original Proceedings and Sentence, &c., which are to be carefully kept '*to the end that the Persons entitled thereto may be enabled to obtain Copies*;' but as the Persons so entitled are only *the Party or Parties tried*, it should seem that there was not in contemplation any Courts-martial but those under which some Party was to be tried, and who in that Character would be entitled to such Copy.

"But the Points which weigh principally in this opinion are those which respect the Power of Punishment given to all General Courts-martial, and the nature of the Oaths to be taken; and from them it does seem reasonably clear that no General Court-martial can be considered as intended by Parliament to be authorized

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to be held under the Mutiny Act but such as are convened for Trial.

"And but for the precedents of the two Courts-martial which are referred to, little doubt could be entertained upon the subject. Those precedents, however, lose much of their weight as there seems to be no Account or trace of their proceedings: perhaps they might have been convened and broke up, notwithstanding the short interval between the two, because they conceived themselves not authorized to act; at all events, some more information respecting them should be obtained before, upon the authority of them alone, any opinion could be formed in favour of the legality of such Courts-martial; but the practice of *Courts of Enquiry* assembled to act without Oath seems to afford a sort of negative Precedent against the authority of *such Courts-martial*, because if there was any legal authority to constitute *Courts-martial for enquiry*, with power to administer Oaths, it is not easy to conceive why *Courts of Enquiry without such Powers* should be adopted in their stead. On the whole, therefore, this does not appear sufficient to authorize an opinion in favour of such Courts-martial, and any general Reasoning upon the Expediency and Necessity of such Courts-martial will not certainly of itself authorize the appointment; and, indeed, the more necessary and expedient they may seem, the more extraordinary it is that there should be such few Instances of their being holden, and the more unaccountable upon any other ground than that of the non-existence of any legal authority to appoint.

"Spr. Perceval,
"Thos. Manners Sutton."

"*March* 10*th*, 1803."

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## Observations on the Power of holding Courts-martial of Enquiry.

"It is to be observed, in point of Fact, that the Court-martial, ordered by the Warrant of the year $17\frac{11}{12}$ was actually held, and gave its Adjudication, which is regularly entered in the *Records* of the Judge-Advocate-General's office, although the *Minutes* of the Proceedings are not forthcoming at this distant period. Copy of the Entry is subjoined.

"The second Warrant, adduced as a Precedent, was on a case in the *Horse Guards*, a Corps distinguished from the rest of the Army by the peculiarity of having one of its Colonels always on personal attendance on the King (as Gold-Stick in Waiting) to receive his Majesty's Commands from himself, on all matters merely regarding



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the Corps, without the Mediation of any Military Department; it may, therefore, be as fair to presume that this Court-martial also did assemble; and that, as the point in question was merely a matter of interior concern to the Horse Guards, the report was made to the King through the Gold-Stick in Waiting, who received and executed the Royal Commands thereon, as to infer that it did not sit, because its Adjudication is not to be found in the Judge-Advocate-General's office.

"From the Section of the Mutiny Act under which the authority for the present Warrant must be derived, it seems not unreasonable to suppose the existence of some kind of Court-martial distinct from those constituted from time to time for the Trial of particular offenders. It is conceived that this idea may be corroborated by adverting to the conclusion of the 9th Section of the Act, where, upon the Conviction (by two Justices) of a Military Officer, for opposing the Civil Power, by which Conviction the Officer is *ipso facto* cashiered, and upon such conviction being affirmed at the Quarter Sessions, and certified to the Judge-Advocate in London or in Dublin, 'the Judge-Advocate is *obliged to certify the same to the next Court-martial which shall be holden in London or in Dublin.*'

"Can it be supposed that an occurrence of this nature was ever intended to be certified to a Court-martial assembled perhaps for the Trial of a private Soldier for Desertion? Does it not imply that there had existed Courts-martial erected for the general cognizance of matters affecting the Military, and possibly bearing some resemblance to a general Session of the Peace, or to a Court of Oyer and Terminer.

"But, putting this distinct Court out of the question, why does it necessarily follow, that in a Military *Trial* there must be an *offender to be tried?* Are they not called Trials in the ordinary Courts of Law, where questions of Property, Francheses, &c., are to be decided, and where no person is put on his Trial?

"Cowell's definition of a Trial is 'an Examination of all *Causes*, Civil or Criminal, according to the Laws of Our Realm.' It is proper to mention, that, as late as the year 1774, the Oath taken by the Members after the words 'in the matter now before you,' contained the following:—'Between Our Sovereign Lord the King's Majesty and the Prisoner to be tried.'

"These words were thought objectionable, because Cases had occurred where there was no Prisoner on his Trial, and they were from that time omitted, between 1774 and 1780.

"As to the Infrequency of Precedents of Courts-martial for *Investigation*, it may be accounted for by observing that Cases are not likely to have often occurred of abuses on an extensive and

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general nature, such as are the present object of discussion; and when they did occur, the Individual on whom the crime attached would be in general obvious,—it would in almost every case be plain from the first, that the offence must have been committed by A or B.

"The reasons for *almost always* preferring a Court of Enquiry to a Court-martial, in the few instances where any formal previous Investigation has been deemed necessary, may naturally have been that, in the former, *three* Officers of Rank were sufficient for the purpose, and that they might proceed at the hours and in the mode most convenient to themselves; whereas a Court-martial must consist of *thirteen* at the least, and could only sit between the hours of *ten* and *three*.

"The instances would be still fewer in which the report of the Court of Enquiry would not be found sufficient for its object. It was tried in the present Case, but was not proved sufficient."

*Further Report from the Law Officers.*

"We shall always with great readiness return to the reconsideration of any Opinion which we may have given, and the propriety of which may be doubted; and most particularly so when those doubts are entertained by Persons whose Judgements must deserve such respect as those who seem to differ from us upon the present subject.

"We do not, however, in this Case, think that the Considerations suggested do remove the difficulties which appear to us to stand in the way of construing the Mutiny Act so as to authorize the holding of General Courts-martial for the Purposes wanted in this Case. The adjudication by the Court-martial in Queen Anne's time, with a Copy of which we have been furnished, seems to us to be referable to no principle upon which it could be upheld as a Judgement. What authority can be found in the Mutiny Act for determining by Court-martial Civil Claims, though arising out of Military transactions? That an Officer or Soldier refusing to comply with a Direction so given might probably risk his dismissal from the Army, we can easily conceive, and the apprehension of that Danger might insure obedience, but the Court itself, *quia* Court, could not have executed its own Judgement in any instance. The authority, therefore, of that precedent does not weigh with us. The consideration of it, however, connects itself immediately with what is said respecting the observations we made upon the word *trial*: it is supposed that a trial does not necessarily import the trial of a Civil right—no doubt it may—but we never had an idea that it was supposed that a Court-martial under the Mutiny Act could sit for the Trial of Causes of any other than a Criminal nature; they are armed with no powers

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of a sort which apply to the trial of Causes of property, and besides the strong Circumstances which we pointed out before, that all the Courts-martial which can sit under that Act may have power to inflict Corporal Punishment, it is clear that the trial of Civil questions, however connected with Military Characters or Transactions, unless for the punishment of some Offender, is nowhere the intention of the Legislature.

"The observations from the 9th Section directing the Judge-Advocate to certify the fact of an Officer's Conviction for the Offence there specified to the next Court-martial held in London or in Dublin, whether well or ill-adapted to the purpose, appears to us to be a provision in the Act merely to prevent, in the case of a Court-martial for the same offence, any other Punishment being inflicted than what is specified in the 10th Section; and it is clear, from the 9th Section, it was no particular species of Court-martial that was intended, as it is to be made to the next Court-martial so holden.

"SPR. PERCEVAL,
"*March* 21*st*, 1803." "THOS. MANNERS SUTTON."

## ( LVIII. )

*Chapter* IX., *par.* 16.

### (1.) WARRANT[1] OF WILLIAM III. FOR THE REMOVAL OF TROOPS FROM TOWNS, &C., DURING THE TIME OF ANY PARLIAMENTARY ELECTIONS.

"WILLIAM R.

"WHEREAS We have given directions for the issuing out of writs for the calling of a new Parliament, and are desirous that the elections may be carried on without the least complaint or pretence of disorder from any of Our troops within the places where such elections are to be made, We do hereby signify Our will and pleasure unto all Colonels and Commanders of any of Our regiments, troops, or companies, that they do not fail, with the troops and companies under their command, to march out of such place of election, three days before the same shall be made, to the next adjacent place or places, and that they do not return to their former quarters until two days after such election, Our garrisons only excepted, where it is necessary that Our forces do remain for

[1] Bk. 519, p. 71.

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the security thereof; the officers therewithal taking care that they do not in any manner concern themselves or intermeddle with such elections.

"Given at Our Court at Kensington, this 12th of July, 1698, in the tenth year of Our reign.

"By His Majesty's command,

(Signed) "WILLIAM BLATHWAYTE."

*Note.*—To the Commanding Officers in garrison towns, orders[1] were issued consonant with those referred to in the Warrant.

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(2.) CIRCULAR ISSUED BY THE SECRETARY AT WAR AT THE NEXT ELECTIONS.

"SIR, "*Whitehall, 30th April*, 1705.

"The writs for calling a new Parliament being very soon to be issued out, and His Majesty being desirous that the Elections be carried on without the least complaint or pretence of disorder from any of the troops within the places where such elections are to be made, has commanded me to signify his pleasure that you give strict charge to the battalions of His Majesty's Foot Guards in England that they do not in any manner concern themselves, or intermedell with such elections where they have no right to vote.

"I am, &c.,

"*To Colonel* ———." "ST. JOHN."

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# ( LIX. )

*Chapter* IX., *par.* 32.

## WAR OFFICE CIRCULAR RELATIVE TO THE UNAUTHORIZED ASSEMBLY OF VOLUNTEERS.

"*War Office, 7th June*, 1861.

"HAVING observed that in several instances Volunteer Corps have assembled under arms for various purposes unconnected with Drill, Parade, or Rifle Practice, I think it right to inform you that no such assemblies ought to take place, except with the approval of the

[1] Bk. 519, p. 134.

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Lord-Lieutenant, and that if the number of Volunteers who propose to be present should exceed the strength of one Battalion, previous application must be made to the Secretary of State for War for his sanction, in accordance with the Circular Memorandum of the 6th June, 1860.

"I have also learnt that in some cases Volunteer Corps have been called out in aid of the Civil Power on the occurrence of local disturbances; and I have, therefore, to point out to you, that as the Volunteer Force is not intended to be employed in this manner, it is inexpedient to assemble it on any such occasion.

"I desire farther to draw your attention to the impropriety of the presence of any armed body at Parliamentary or Municipal Elections; and to request that you will give directions to the Commanding Officers of all Volunteer Corps, within the County under your charge, not to assemble their Corps for Drill or any other purpose, between the issue of a Writ and the termination of the Election in any County or Borough in the neighbourhood of their Headquarters, or during the progress of any Municipal election in any town to which they may belong.

"I have the honour to be,

"Your obedient Servant,

"*Her Majesty's Lieutenant* "HERBERT."

"*for the County of* ———."

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## ( LX. )

*Chapter* IX., *pars.* 33 *and* 34.

### (1.) REPORTS[1] OF THE LAW OFFICERS ON THE 8 GEO. II., C. 30.

"SIR, "16*th June*, 1747.

"We have received yesterday your letter of the 12th, wherein you are pleased to mention the late Act of 8 Geo. II. for regulating the quarters of soldiers during the time of an election of members to serve in Parliament, by which the Secretary at War is obliged to order the removal of such soldiers from the places of election one day at least before the election, without any exemption but for Westminster and fortified places, and to desire our opinion in what manner you may act with respect to other places of election where troops

[1] Bk. 721, p. 23.

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are quartered as guards upon prisoners of war, consistent with your duty, the safety of those places, and that Act, at the ensuing Election.

"We have considered this matter, and are of opinion that, as the Act is positive, and leaves no discretionary power in the Secretary at War, you are under a necessity of sending such orders for the removal of these troops as well as others. The way to provide for the safety of those places, and the security of the prisoners during the election must, we presume, be to remove the prisoners at the same time to some neighbouring place under the same guards, or such other as shall be sufficient for that purpose, until one day at the least after the election shall be over.

"We are, with the greatest respect, &c., &c.,

"D. RYDER.

"*Right Honourable H. Fox, Esq.*, "W. MURRAY."

"*Secretary at War.*"

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## (2.) LETTERS AND REPORT OF THE ATTORNEY-GENERAL (SIR L. KENYON) ON THE SAME SUBJECT.

"SIR, "*Windsor*, 28*th March*, 1784.

"I understand by the officer commanding here that he has a route for the companies quartered here, but that General Faucett and you are of opinion that they may remain under an idea of relieving for the King's duty.

"I am peremptorily of opinion that if they stay in the Borough (the Castle is not in the Borough) they will invalidate the Election; nor do I think the innholders are obliged to receive them within the time appointed for their removal. I judged it right to say thus much, lest my election, otherwise secure, be invalid, and am

"Your obedient servant,

"*M. Lewis, Esq.*" "PEN POWNEY."

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"SIR, "*War Office*, 28*th March*, 1784.

"I have this moment received your letter of this day's date. The orders I gave yesterday were framed upon the model of those given by Mr. Jenkinson when Secretary at War, in respect of the last election at Windsor. The only difference is that authority was then given to the commanding officer to encamp the troops in the Little Park if he found it would accommodate the innholders, which he accordingly did; and that the forces then in Windsor consisted

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of five companies of a much higher establishment, the whole of which were judged necessary for the Guard on His Majesty.

"The alternative of encamping, it is evident, could not now be given, as well from the troops not being now provided with field equipage as from the season of the year. I conceived myself therefore (in the absence of Sir George Yonge, who is in Devonshire) perfectly founded in the orders of yesterday upon the precedent of the former election.

"The exemption they contain has no reference to there being a castle at Windsor; if it had, the removing the troops to the Little Park, when the law requires the distance of two miles at least, was as illegal as if they had been ordered out of the castle into the borough of Windsor. But it rests on the residence of His Majesty.

"My order to General Trigge directs the removal of all soldiers, except such as shall be attendant as guards on His Majesty (in the precise words of the Act), and my letter, to obviate any doubts in the mind of the Commanding Officer, specifies that the four companies of the 12th Foot are not more than sufficient to form that guard.

"Under these circumstances, I certainly shall not take upon myself the removal of those companies from Windsor; but I will endeavour to obtain the opinion of the Attorney and Solicitor-General this evening (though it is very doubtful whether they may be met with), and if they think the orders given not strictly and clearly legal, every endeavour that the time will admit of shall be exerted to correct the error. I shall take leave to refer Colonel Trigge to this letter, as I cannot have time to state the subject to him at length.

"I am, &c.,

"*P. Powney, Esq.*" "M. Lewis."

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*Report*[1] *of the Attorney-General.*

"28*th Mar.*, 1784.

"I think Windsor will be deemed the place of His Majesty's residence within 3rd Section of the Act of Parliament, although the King should happen to be at St. James's on that day; but as there is not any levée to-morrow, the King will probably be at Windsor till Wednesday, which will put the question out of all doubt.

"L. Kenyon."

[1] No. 2 Bk., p. 228.

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## (3.) Statement and Report of the Attorney-General (Sir Thos. Plumer) on the same Act.

In the year 1812, General Oswald reported to Lord Palmerston as Secretary at War, that "in consequence of a requisition made to him by the Mayor of the city of Bristol, and certain Magistrates of the county of Gloucester, for the aid of troops in support of the civil power, the General had been compelled to march the Royal East Middlesex Regiment into the immediate vicinity of this city, and to place a portion of them in the parish of Clifton, county Gloucester."

The Report went on to state that "although the Mayor required the immediate support of the troops, he deemed it inexpedient to march them within the city. Billets were to have been procured for a portion of the corps in the suburbs, and the remainder placed in a conveniently situated new jail, close to, but without Bristol. However, the building of the Armoury offering temporary accommodation for a considerable body of men, many reasons led the General to prefer it to scattered quarters upon an occasion when the services of the troops were momentarily called for."

Upon the Statement being laid before the Attorney-General, he reported to Lord Palmerston in these terms:—

"My Lord, "*Lincoln's Inn, 2nd July*, 1812.

"The Act of 8 Geo. II., c. 30, having peremptorily, and without any exception or qualification, forbidden the approach of any troops to within two miles of the place of election till one day at least after the poll is ended and the poll-books closed, I cannot say that what has been done at Bristol is not a direct breach of the Act. The House of Commons also, on 22nd December 1741, resolved 'that the presence of a regular body of armed soldiers at an election for members to serve in Parliament is a high infringement of the liberties of the subject, a manifest violation of the freedom of election, and an open defiance of the laws and constitution of this kingdom.'

"Your Lordship is also aware of the penalty which attaches by the Act of Parliament on the Secretary at War for any violation of the Act.

"Nothing, therefore, but absolute necessity to prevent a dangerous infraction of the public peace and of the freedom of election by an illegal force, which the Civil Power is not of itself sufficient to redress, and the application of the magistrates for the

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assistance of the military for this purpose, can justify their introduction during the election. Great care must then be taken that nothing is done by the military beyond what the immediate necessity of the case requires, and that they should uniformly act under the sanction and direction of the magistrates and the returning officers. If the necessity be clearly made out in proof, I think an Act of indemnity would be passed to prevent any penalty or criminality attaching in such a case. The continuance of the troops within the town for the purpose above mentioned would not, I think, invalidate the election,

"I have the honour, &c.,

"THOS. PLUMER."

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## ( LXI. )

*Chapter* IX., *par.* 35.

### ORDER[1] OF CHARLES II. FOR REMOVAL OF TROOPS FROM TOWNS DURING THE ASSIZES THEREIN.

"CHARLES R.

"IN regard of the approaching Assizes to be held in our town of Chelmesford, you are with Our most dear and most intirely beloved cousin Prince Rupert, his own troops of Dragoons, and your troops of Dragoons, of Our said most dear cousin's own division, to march from your present quarters, at Our said town of Chelmesford, to Our towns of Ingerstone and Brentwood, and to quarter the said troops there, and in the towns and places adjacent, in inns, victualling houses, and alehouses only for such time as the said Assizes shall be so held at Our said town of Chelmesford, after which time the said two troops of Dragoons are to return back to their former quarters at Chelmesford aforesaid, and the places adjacent; and We hereby require all Our officers and constables whom it may concern, to be assisting unto you in the quartering the aforesaid two troops of Dragoons in this their remove to Ingerstone and Brentwood, and the towns and places adjacent, and upon the return of the said two troops back again to their former quarters in inns, victualling houses, and ale houses as aforesaid, you and the officers of the said

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[1] Mis. Bk. 512, p. 360.

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two troops are to be careful that the soldiers do behave themselves civilly, and duly pay their quarters.

"Given this 5th day of July, 1672.

"By his Majesty's Command,

"CLIFFORD."

"*To Our trusty and well-beloved Captain James Coffer, or other Officer and Officers-in-Chief Commanding the Two Troops of Dragoons above mentioned.*"

## ( LXII. )

*Chapter* IX., *par.* 37.

### LETTERS TO AND FROM THE JUDGES AS TO REMOVAL FROM OR CONFINEMENT IN BARRACKS.

(1.) "MY LORDS, "*War Office, 2nd March*, 1796.

"I have the honour to inform your Lordships that the usual orders have been given for the removal of His Majesty's forces quartered in the towns where the Assizes are to be holden; but as doubts have arisen whether it is also necessary to remove the troops which occupy barracks in or adjoining to those towns, I take the liberty of stating the question to your Lordships, not merely as to the legal necessity of removing on such occasions all the troops, whether in barracks or billeted on the public-houses, but likewise as to its expediency, supposing it not to be a matter of legal necessity. Being desirous, in a point of so serious importance, to be entirely governed by your Lordships' judgment.

"In troubling your Lordships with this reference, the places I particularly allude to are Shrewsbury and Gloucester.

"I have, &c.,

(Signed) "W. WINDHAM."

"*The Judges on the Oxford Circuit.*"

(2.) "SIR, "*Oakham, 3rd March*, 1796.

"On my arrival here, I have had the honour of receiving your letter of the 2nd instant, addressed to your Judges on the Midland Circuit. The Lord Chief Baron, who is joined in your commission with me, being in London, I cannot have the advantage of consult-

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ing with his Lordship on the subject which you refer to us. My own opinion I send you by the earliest opportunity. I think it is very expedient that soldiers should be removed from their quarters in towns where the Assizes are holden, and I am not aware of any circumstances which should except Lincoln, Nottingham, or Coventry, from the general usage. Where barracks are erected, and the troops are confined to those barracks, I know of no legal necessity or present expediency which requires that they should be removed from thence, on account of the Assizes.

"I have, &c.,

(Signed) "GILES ROOKE."

(3.) "SIR, "*Oxford, 4th March*, 1796.

"We have received the honour of your letter of the 2nd of this month. We do not recollect any statute which requires that troops shall be removed from their quarters in towns where the Assizes are held, but we believe that measure has never been omitted, unless some particular circumstances have made a military force necessary to be continued there.

"As to the expediency of withdrawing the troops from the barracks at Shrewsbury and Gloucester, we feel ourselves unable to form any judgment, as we do not at all know the present situation of those places.

"We have, &c.,

(Signed) "A. THOMSON,

"*The Right. Hon. William Windham*, "S. LAWRENCE."

*&c., &c., &c.*"

(4.) "SIR, "*Winchester, 4th March*, 1796.

"We had the honour of receiving your letter this morning, and there does not appear to us to be any legal necessity or expediency for sending the soldiers who are in barracks near Exeter or Dorchester, from thence during the Assizes; but we submit to your consideration whether it may not be proper to order the officers to keep the men within the barracks during that time, or if they cannot be kept from the towns, to direct that they shall not wear their side-arms, lest any quarrels should arise between them and the people of the county, for we have frequently met with instances of fatal effects, which never would have happened if the side-arms had been left with the muskets.

"We have, &c.,

(Signed) "R. PERRYN,

"F. BULLER."

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(5.) "SIR, "*Hertford, 8th March*, 1796.

"I had this day the honour of receiving your letter of the 2nd instant. My apology for not having acknowledged it before, is that I did not receive it sooner. In answer to the question you have done me the honour of asking, I take the liberty of informing you that, judging hastily upon the subject, I am not at all aware that it is necessary to remove the troops which occupy the barracks near Chelmsford; as to those which are billeted on the public-houses, I think it would be expedient, for the convenience of persons resorting to Chelmsford on business, that they should be removed, as I understand there will probably be much business there, the number of prisoners being unusually great. I am very sorry that I did not receive your letter as, by the date, I might have done before I left London, as I should then have had an opportunity of consulting Mr. Baron Hotham upon the subject, who will not leave town till to-morrow, and who has had opportunities of being more fully informed respecting the business likely to be at Chelmsford, than I have.

"I have, &c.,

(Signed) "NASH GROSE."

"*The Right. Hon. W. Windham.*"

(6.) "SIR, "*War Office, 7th July*, 1796.

"I have received your letter of yesterday's date, and am directed to acquaint you that the troops in barracks need not be moved on account of the Assizes, but are to be kept as much as possible within the barracks during that period, and when they do go out, are not to be armed, unless upon actual duty.

"I have, &c.,

(Signed) "M. LEWIS."

"*Major-General Leland,*
*&c., &c., &c.*"

(7.) "SIR, "*Norwich, 18th July*, 1796.

"On our arrival at Norwich this evening, in order to hold the Assizes for the County of Norfolk, and the City and County of Norwich, we find to our surprise that a large body of the military were in the town, and that the usual orders which had been issued for removing them had been countermanded. It is due to the Commanding Officer, Major-General Leland, to say that he has conducted himself with all possible attention to us. It being a time of war and very possible that exigencies, which ought not to have been

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communicated to us, may have created a necessity for the troops remaining here, we have taken no other step on this extraordinary occasion than to request that the men may be kept within their barracks, and that there may be no beat of drum or any other military appearance during the Assizes; but we feel ourselves compelled to make our solemn protest to you, Sir, against this measure, which we conceive to be unconstitutional and to be justified by urgent necessity only, and to declare that the responsibility for it must rest with the officers of Government.

"We have, &c.,

(Signed) "J. A. EYRE,
"W. H. ASHURST."

(8.) "MY LORDS, "*War Office*, 20*th July*, 1796.

"I have been honoured with your Lordships' letter of 18th instant, and am to acquaint you that, although great inconvenience to the troops and great hardship to the innkeepers would have been created by the removal of His Majesty's forces out of the barracks in or adjoining to towns where the Assizes were to be holden, these considerations would not have prevented me from giving orders for the removal of the whole had I not had good reason to believe, not only that there was no legal necessity for such a measure with regard to troops in barracks, but that it was not desired by the Judges as a matter of constitutional expediency.

"A question having arisen on this point about the time of the last Spring Assizes, I wrote a circular letter to the Judges of the respective circuits, of which I enclose a copy. I enclose also the answers of some of the Judges, from the rest I did not hear; but I persuade myself that in these letters there will appear enough to justify the conclusion I have drawn from them, which has guided my conduct on the occasion of the present Assizes.

"Your Lordships will likewise see from the annexed copy of a letter, written by my direction to General Leland, that instructions had been given before the arrival of your Lordships at Norwich for keeping the soldiers as much as possible within their barracks during the Assizes, and for not permitting them to wear their arms when they did go out, unless upon actual duty.

"I shall be extremely glad to be favoured with your Lordships' further sentiments upon the subject, and request you to return the letters of the Judges, which are herewith sent in original.

"I have, &c.,

"*Lord Chief Justice Eyre.* (Signed) "W. WINDHAM."
"*Mr. Justice Ashurst.*"

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(9.) "SIR, "*Great George Street*, 31*st July*, 1796

"Your letter of the 20th instant, enclosing four original letters from some of the Judges, and copies of a circular letter to the Judges, and a letter from the Deputy Secretary-at-War to Major-General Leland of 7th July, 1796, did not reach me till the 29th. In the absence of Mr. Justice Ashurst I take the earliest opportunity of obeying your commands, by communicating to you any further sentiments upon the subject of that letter, and I have the honour to inform you that I remain of opinion that it is unconstitutional, and to be justified by necessity only, to keep His Majesty's forces in the towns where the Assizes are holden during the time of the Assizes, and that there is no distinction, in this respect, between troops in and out of barracks. I conceive that the practice of removing them from the assize towns originated in the same principle as the practice in the case of Elections, which has been enforced by Act of Parliament.

"I know (for I had it from his own mouth), that Lord Mansfield once took upon himself the responsibility of a Commanding Officer's removing military force from an assize town without orders from the War Office, the orders having probably been by accident omitted to be sent, and Lord Mansfield declared that he would adjourn the Assizes if the troops were not removed.

"I do not recollect having ever heard of the circular letter, a copy of which you have favoured me with, or of the answer of any of the Judges. I take the liberty to inform you that when questions arise upon which it is thought necessary that the Judges should be consulted, the course is that His Majesty (usually I think) in Council is pleased to direct that the question should be proposed to the Judges; the Order of Council is then communicated by one of His Majesty's Secretaries of State to the Lord Chancellor, and by him to the Judges, and the opinion of the Judges collectively and not individually, unless they differ, is transmitted by the same channel. For my own satisfaction, I shall take the earliest opportunity of communicating this correspondence to the Judges, and of collecting their sentiments upon it, and if you are pleased to favour me with copies of the original letter of the Judges, which I return to you, I shall make these likewise a part of the communication; but in this course I can only satisfy myself. If you, Sir, are desirous of having an official communication of the opinion of the Judges upon this question, it can only be obtained, as I conceive, through the channel I have pointed out.

"You will be pleased to observe that I have avoided speaking of His Majesty's forces in barracks near to assize towns. I am aware that when they are removed from assize towns, they are



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frequently quartered at no great distance from those towns. It may be difficult, probably impracticable, to draw the line. The question in a particular case, I apprehend, would be whether the military were so removed as to produce the effect of the removal of all military force from the Assizes.

"I have only to add that I consider myself as writing to you, Sir, now, rather confidentially than officially (the Assizes being over, and my commissions determined); and speaking confidentially, I will mention to you, that I was very apprehensive that the keeping the troops in the barracks within the City of Norwich during the Assizes would have been made the subject of popular clamour in a place where you know that there are people disposed to encourage clamour. Everything appeared to pass very quietly, and I hope no more clamour has been or will be raised on this occasion; but the War Office, and I will add the Judges, may not always be so fortunate.

"And now, Sir, laying aside all consideration of legal necessity, or constitutional expediency, I will submit, for your consideration, whether this use of the barracks should be permitted at the hazard of furnishing another popular argument against them. I confess I expected that a contrary course would have been pursued, that a merit would have been made of removing every man at a considerable temporary inconvenience, which, being temporary, might be endured. The argument in favour of barracks being, as I take it, that the want of them produced a great inconvenience, which was perpetual, and therefore could not be endured.

"I flatter myself, Sir, that you will do me the justice to believe that I have no wish to give unnecessary trouble to the War Office, and I am not without hopes that you will consider this letter as a proof of the personal regard with which

"I am, &c.,

(Signed) "J. A. Eyre."

(10.) "My Lord, "8*th August*, 1796.

"I feel no inclination to dissent from the opinion with which your Lordship has favoured me, and shall certainly not be willing to depart from it in practice without a stronger necessity than any that is likely to occur. The formal opinion therefore from the Judges at large is not at all necessary, nor in fact does the question itself appear to be of that sort which could become properly the subject of such reference. What was meant by the former application was rather to obtain the advice of sound and able counsellors, the *responsa prudentum*, in aid of my own discretion, than to refer to

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the Judges a question on which they were formally and officially to decide. The manner in which your Lordship has been so obliging as to communicate to me your opinion perfectly coincides with that idea, and on that as well as on every other account has a claim to my best thanks. The opinion itself could hardly have failed to be decisive even if I had not been previously convinced that without some special necessity it would be better to submit to the inconvenience of removing the troops, which, except in the case of Norwich, is not likely to be material, rather than to stir a question of so delicate a nature, and which might eventually produce so much unpleasant discussion.

"I have, &c.,

(Signed) "W. WINDHAM."

(11.) "SIR, "*Bloomsbury Square, 21st July*, 1797.

"We have been honoured with your letter, in which you wish to know if we have any objection to the troops remaining in the barracks at Winton during the Assizes, provided they keep as much as possible within them, and if they appear out, that it be without their side-arms, unless upon actual duty. An answer to which is, that considering you as most competent to judge of the necessity of continuing the troops in their barracks, we do not take upon ourselves to form any opinion upon that subject, and that it must depend upon the conduct of the soldiers, if they should remain in the barracks, whether it will be necessary for us to take any notice of their being there or not.

"We have, &c.,

(Signed) "NASH GROSE.

"S. LAWRENCE."

(12.) "SIR, "*25th July*, 1797.

"We have the honour of your letter desiring to know whether we have any objection to the troops remaining in the town of Newcastle during the ensuing Assizes, stating that it will be attended with much inconvenience to the service if they should be removed. We presume it is always attended with some inconvenience to the troops to change their quarters on these occasions, yet the practice has generally prevailed, and as we know not the number of persons who may be called by business to the Assizes, nor the extent of the accommodations which the town affords, nor the number of the troops which are now quartered there, we can only give the general answer to your question, that if the continuance of the troops in quarters is compatible with the convenience of the suitors (of which



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we presume you have informed yourself) and necessary for the public service (of which necessity we consider you as the most competent judge), we shall have no objection to their continuing, provided they conduct themselves orderly and regularly, and, as you propose, are ordered to keep as much as possible within their quarters, and do not appear in public with their side-arms, unless upon actual duty.

"We have, &c.,

(Signed) "A. THOMSON.
"E. ROOKE."

"*The Rt. Hon. William Windham, &c., &c., &c.*"

(13.) "SIR, "*Whitehall, 5th July*, 1847.

"I have laid your letter of the 26th ultimo before Secretary Sir George Grey, and I am to acquaint you, for the information of the Secretary at War, Sir George Grey thinks that the practice which has so long prevailed of confining troops to barracks or quarters during the holding of Assizes, should be continued. The recent Act of Parliament which sanctions a similar practice in the disposal of troops at the time of Elections, and makes it the law of the country, affords, in Sir George Grey's opinion, a very strong reason for adopting the same course, and continuing the same practice for the Assizes, as well as for the Elections.

"I am, &c.,

(Signed) "S. M. PHILIPPS."

(14.) "SIR, "*War Office.*

"I have the honour to acquaint you that during the holding of Assizes at any city or town, the troops there stationed should, in accordance with the Act, 10 Victoria, cap. 21, regulating the stations of soldiers during Parliamentary Elections, be ordered to remain in their barracks or quarters, unless for the purpose of mounting or relieving guard, for attending as evidence, &c., at such Assizes, or when attending as the guards of Her Majesty, or any person of the royal family, and I have to request that you will give directions accordingly to the troops stationed at any of the places within the district at your command, at which, as stated in the enclosed list, the ensuing Assizes are to be held. This direction may, however, be rescinded by the consent of the Judge.

"I have, &c.,

"*The General Officer Commanding.*" (Signed)

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# ( LXIII. )

*Chapter* X., *par.* 2.

## Report[1] of Law Officers as to Trial of Governor Wall by Court-martial.

"*Case.*

"Several complaints have been exhibited against Lieut.-Colonel Wall for his conduct during his command in the Island of Goree, and, among others, he is charged with acts of cruelty and oppression exercised on several of the principal inhabitants of that island, female as well as male, by causing them to be seized, imprisoned, and flogged without trial of any kind. Colonel Wall is also charged with suffering a sailor, belonging to the 'Prince William' privateer, who had been tried at Goree by a General Court-martial, to perish in the Provost or Military Prison there for want of proper attention. Orders have been given for an inquiry by a General Court-martial into the first of these complaints so exhibited against Colonel Wall, but a doubt has arisen whether outrages committed by abuse of his authority as commandant at Goree towards such of the inhabitants as can in no respect be considered as military, are proper subjects of inquiry by a General Court-martial to be held in this kingdom.

"*1st Question.*—The Secretary at War requests the opinion of the Attorney-General and Solicitor-General whether outrages said to be committed by Governor Wall as commandant at Goree towards inhabitants who cannot in any respect be considered as military, are proper subjects of inquiry by a General Court-martial to be held in this kingdom?

"*Report* 1.—We conceive that the outrages committed by Col. Wall upon the inhabitants of the place of which he was governor, are not the subjects of inquiry of a General Court-martial.

"*2nd Question.*—Also whether Col. Wall may with propriety be tried by a Court-martial here on a charge for suffering a sailor belonging to the 'Prince William' privateer, who had been tried at Goree by a General Court-martial, to perish in the Provost or Military Prison there for want of proper attention?

"*Report* 2.—We conceive the criminal negligence imputed to

[1] Bk 722, p. 125.

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Colonel Wall cannot be inquired into and punished by a General Court-martial.

"JAMES WALLACE,
"20*th May*, 1783." "JOHN LEE."

## ( LXIII.* )

*Chapter* X., *par.* 8.

### REPORT[1] OF SIR SIMON HARCOURT ON THE DISCHARGE OF ARRESTED SOLDIERS FROM CIVIL CUSTODY.

"*Statement.*

"THE Officers of the Army in raising Recruits for His Majesty's Service make great complaints, that notwithstanding the Clause in the late Act of Parliament for raising Recruits for the Land Forces and Marines, whereby it is expressly said, That no person listed under the hands and seals of three or more Justices of the Peace, or listing himself voluntarily, according to the true meaning of the said Act, shall be liable to be taken out of His Majesty's Service by any Process other than for some criminal matter, yet several persons who have been so listed have afterwards been arrested and imprisoned, and there detained to the prejudice of His Majesty's Service, and no application of the Officers has been sufficient to obtain their release, though an appearance be offered, as the Act requires, to take judgment against the Estate, but the person to remain in the Service.

"*Query.*—What method is proper to be taken for the releasing out of prison persons so arrested and detained after listing in His Majesty's Service, according as the Act of Parliament directs?"

"*Report.*

"Upon any Process issuing out of any of the Courts at Westminster, the Officers to whom the execution of the process belongs are not to make themselves Judges of the Act of Parliament, but must give obedience to the Court, and execute its process. If, notwithstanding the provision in the Act, the person listed or listing himself voluntarily, shall afterwards by virtue of any process be

[1] Mis. Bk. 519, p. 55, and see Turner *v.* Turner, 1 Burr., p. 466; Bond *v.* Isaac, ib., p. 339.

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taken out of His Majesty's service, and detained contrary to the express direction of this Act, it is proper to move the Court out of which the Process issued, or some Judge of the Court, to discharge the person arrested, common bail being filed as the Act directs. If the soldier be taken by a Process out of any Inferior Court, application must be made to the Judge of the Inferior Court, as the Mayor, &c., for a discharge, and on refusal complaint may be made to the Court of Queen's Bench.

"But, as the Act is drawn, though a person be taken by mean process be discharged, I doubt, after judgment obtained, the body of such Soldier so discharged will be liable to an execution, unless he plead the Act, which will in a great measure frustrate the meaning of this Act.

"SIM. HARCOURT."

"*June* 7, 1706."

## ( LXIV. )

*Chapter* XI., *par.* 6.

GENERAL ROUTE [Hd. Qrs.]

"*No.*_____

"It is her Majesty's pleasure, that you do cause the troops under your command to march, from time to time as occasion shall require, by such routes and in such divisions as you may judge expedient, to such place or places as shall be considered necessary, where they are to be quartered and remain until further orders.

"Wherein the Civil Magistrates, and all others concerned, are to be assisting in providing quarters, impressing carriages, and otherwise, as there shall be occasion, according to law.

"*Given at the War Office, this th day of May*, 1858,
*By her Majesty's Command.*

"JONATHAN PEEL.

"*To H. R. H.*
"*The Field-Marshal Commanding-in-Chief.*

"By virtue of the foregoing authority, you are hereby directed to cause

_____

_____

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"Constables or other authorised persons giving billets on this route are to insert, when not already done, on the other side the names of the towns or places where the quarters are provided, and the days when the billets are granted, verifying the same by their signatures, in the space alloted for that purpose.

"*Given at the Horse Guards, this day of* 186 .

"*By order of H. R. H.*
"*The Field-Marshal Commanding-in-Chief.*

"*To the General* *Quartermaster-General.*
"*Officer Commanding.*"

## ( LXV. )

*Chapter* XI., *par.* 37.

### By the Prince of Orange—A Declaration[1] for the Better Quartering of the Forces.

"Whereas, We are informed that divers regiments, troops, and companies are contrary to our intentions quartered in private houses, We have thought fitt hereby to declare Our pleasure to be that none of the Forces, of what nation or quality soever, shall presume to quarter in any private house without the free and voluntary consent of the owner, and that all houses be deemed private houses except victualling houses and houses of public entertainment, or such as sell wine or any other liquor by retail. In which houses We do think for that all officers and soldiers be lodged by the direction and appointment of the chief Magistrates, Justices of the Peace, or constables of the place where any Forces shall come, and not otherwise. And We do hereby strictly forbid all officers and soldiers upon any pretence whatever to take up any quarters for themselves or others without such direction or appointment, upon pain of being cashiered, or suffering such other punishment as the offence shall deserve.

"Given at St. James's."[2]

[1] War-office Marching Book (No. 15), 1688-5, p. 51.

[2] There is no date to this entry; but the previous entry is 22nd Jan., and the following one the 23rd Jan., 1688-9. In Mis. Bk. 517, p. 23, are full instructions under date of 13 June, 1692, for the regular payment of Quarters, to be enforced by Court-martial.

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# ( LXVI. )

*Chapter* XI., *par.* 46.

## Reports of the Law Officers on the subject of Billeting Troops under the Mutiny Act.

### (1.) *Opinion about Landlords refusing to entertain Soldiers.*

"Query.—Whether a landlord can legally refuse to entertain a foot soldier at the rate of 4*d.* per diem., or in case the soldier should provide for himself, whether the landlord is obliged to give him firing, small beer, salt, and vinegar; and whether any and what penalty can be laid upon the landlord by the Act of Parliament for refusing the same?

*Solicitor's Opinion.*

"The Act of Parliament only obliges the publick-house keeper to receive soldiers billeted on him, according to the proportion with his neighbours, and the soldiers are to pay reasonable rates, and the Justices at the Sessions have power to determine what shall be thought reasonable rates, and one Justice has power to relieve if the person is burthened with more than his proportion.

"As to the 4*d.* per diem for a foot soldier, that is only where the landlord expects the benefit of having his accounts cleared by the officer who receives the subsistance, the officer is obliged to pay out of that only 4*d.* per diem for diet and small beer, nor is mention made of other particulars, so that if the landlord trust the soldiers with any thing else he must get it of the soldier as well as he can. I find no particular penalty on a publick-house keeper refusing to entertain a soldier quartered on him, or providing diet and small beer for 4*d.* per diem; but the Justices at Sessions have power to fine such person at discretion if he is indicted for disobeying any part of the Act, which he is obliged to comply with. I should think some more effectual clause might be got with particular penaltys, levyable in a summary way, upon such housekeepers who refuse, &c.; there are penalties upon constables, &c., and the officers, &c., who omit to do their duty, but none on the housekeepers.

"Wm. Thomipson."

"13*th June*. 1717."

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(2.) As to Billeting in Westminster, and Choice of Quarters by an Officer.

"The Humble Petition of Avis Bennet, Widow,

"Sheweth,

"That your Petitioner renting a House of 80*l.* a-year at Charing Cross, within the verge of the Court, where they are very dear and lodgings answerable, has Ensign Gugleman of the 3rd Regiment of Foot Guards billitted upon her for Quarters; he insists upon making good the same, and having a room which she can lett for near 20*l.* a-year (a thing unprecedented for an Officer to demand): but since he is pleased to put himself upon the footing of a private man, by demanding free quarters, she doth not refuse the same, which he not liking, threatens her with a complaint to your Honour, and forcing her compliance by Military execution with a file of Musqueteers.

"Your Petitioner therefore most humbly prays your Honour's protection, having done nothing but what she humbly conceives may be justified.

"And your Petitioner shall ever pray, &c."

"*To the Hon. Henry Pelham, Esquire,*
*His Majesty's Secretary at War.*"

(3.) Report of Sir P. Yorke.[1]

"I conceive an Officer or Soldier cannot at his pleasure demand what room in the house he thinks fit, which seems to me to be an oppression and contrary to the intention of the Act of Parliament. As to the Military execution said to be threatened in this case, I take the very threatening to be an offence: And if any Officer or Soldier shall be guilty of so great a violence he will be answerable for all the consequences of it, and as well be liable to make full satisfaction to the party grieved in an action at Law, or to be cashiered or otherwise punished by a Court-martial.

"16*th September*, 1724." "P. Yorke."

(4.) Report of Sir P. Yorke that Billeted Horses[2] are not liable to a Distress for Rent.

"I apprehend that the horses mentioned in this case, being actually in the King's Service in a Troop of His Majesty's Guards

[1] Bk. 721, pp. 10, 11.

[2] As to Billeting Horses, see Read v. Willan, 2 Doug. Rep., 424, and Bk. 722, pp. 13, 31.

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at the time of the Distress taken, were not liable to be distrained for rent, but ought to be exempted from distress in like manner as armour and many other things are, in which the publick good is concerned; it being a thing of the most dangerous consequence that the horses of the King's Troops should be detained under pretence of distresses. But this objection will be the stronger if there was other sufficient distress upon the premises at the same time. I think the horses ought to be demanded to be redelivered upon this account, and if they shall be refused, several replevias ought to be taken out in the names of the private troopers to whom the several horses belong.

"P. YORKE."

"*Nov. 6th*, 1724."

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(5.) REPORT[1] AS TO QUARTERING HORSES IN STABLES FAR DISTANT FROM THE MEN.

"SIR, "*Whitehall, 23rd September*, 1735.

"The Officer commanding in chief the detachment belonging to His Majesty's Own Royal Regiment of Horse Guards at Putney, Fulham, Wandsworth, and the Brentfords, having complained to me that the Civil Magistrates in those places have taken upon them to billet the troopers and their horses in different houses, so that the man and his horse are sometimes a mile and half or more asunder, by which the horse cannot be so well looked after as when the rider and he are together, neither can they be ready to parade when called upon any sudden occasion, I have thereupon represented this affair to the Queen and received Her Majesty's commands to acquaint you therewith, that as it is of great consequence to His Majesty's service, you will be pleased to send me your opinion as soon as conveniently you can, whether the Civil Magistrates have power by the Mutiny Bill or any other Act of Parliament now in force to quarter the men and their horses separate, since it is a practice but of late made use of, or whether the Act doth not direct or imply that they ought to be quartered together. You will please to observe that in the aforesaid Bill, where the rates of quarters are ascertained, it is said that the rate for a Light Horseman shall be 6*d.*, and for hay and straw for his horse 6*d.*, and so for a Dragoon, which seems to imply their being quartered together, and undoubtedly was the intention.

"I am, Sir,

"Yours, &c.,

"*His Majesty's Attorney-General.*" "WILLIAM YONGE."

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[1] Bk. 721, p. 37.

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P.S. in Mr. Arnold's letter to John Skipp, Esq., dated 28th August, 1736:—

"I send you enclosed the Opinion of the Attorney-General relating to the quartering of soldiers."

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(6.) "Sir, "*Lincoln's Inn, October 13th*, 1735.

"In obedience to Her Majesty's commands, signified to me by your letter of the 23rd September, I have considered the case which you were pleased to lay before me concerning the billeting of soldiers and their horses.

"There are no words in the Mutiny Act, nor in any other Act of Parliament that I know of, which give a power to the Civil Magistrates to billet the men and their horses separately, nor can I find any clause in any Act of Parliament which expressly prohibits this practice; but it seems to be implyed in that clause of the Mutiny Act which ascertains the rates of the quarters, that the men and their horses ought to be quartered together, the contrary is very absurd and may be attended with great inconveniences. I think, therefore, that this practice has no foundation either in law or reason, and that if the Civil Magistrates at Putney, Fulham, &c., persist in billeting the troopers and their horses in different places, and especially if such places are at a considerable distance from each other, an information ought to be moved for against them for abusing the power vested in them by the said Act.

"I am, Sir,

"Your most obedient humble servant,

"J. Willes."

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## (7.) Report[1] as to Liability of Innkeepers to Provide for Subsistence at a Statutory Price.

"Sir, "*Lincoln's Inn, August 17th*, 1736.

"Your letter of the 12th did not come to me till yesterday, otherwise it had been answered before. I am at a loss to guess from whence the difficulty arises mentioned in Mr. Dawson's and Mr. Skipp's letters, for the words of the Statute seem to me to be very plain.

"In the Act which is now in force it is said, p. 47, that the constables, &c., may quarter and billet soldiers in inns and such other places as are therein specifyed, and in p. 49 it is enacted, that the officers and soldiers so quartered and billeted shall be received by the owners of the inns, &c., in which they are allowed to be quar-

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[1] Bk. 721, p. 44.

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tered and billeted by the said Act, and shall pay such reasonable prises as shall be appointed from time to time by the Justices in their Quarter Sessions, who are thereby required to set and appoint such reasonable rates for all necessary provisions for such officers and soldiers, and in pp. 50, 51, provision is made how such innkeepers, &c., shall be paid the subsistence money, and the sums which are there mentioned, and which may not be exceeded, are expressly said to be for diet and small beer.

"I am, therefore, of opinion that the innkeepers, &c, are obliged to provide diet and small beer for the soldiers who are quartered and billeted with them (as I believe the practice has always hitherto been), and I think that there's no foundation for what is insisted on by the innkeepers of Ledbury.

"I am, Sir,

"Yours, &c.,

"J. Willes."

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(8.) Statement as to the Opposition made to the Billeting of Soldiers (1793), and Report of the Law Officers.

"At several places in Sussex, both in the last and present war, it has been a practice with the Publicans upon the approach of troops ordered to be quartered therein to take down their Signs, and to throw up their Licences in a Body. By the interference of the Magistrates shewing them how unjustifiable such proceedings were, and threatening them that if they did not immediately resume their Licences they would consider such Licences as formally surrendered, and never would grant a fresh Licence to any of the persons concerned in the combination, many of the Publicans have been brought to acknowledge their error and to open their houses again, so that with regard to all such the matter was passed over. But several fresh instances in several other towns having lately occurred of the Publicans having in a Body on the approach of troops ordered to be quartered therein taken down their Signs and thrown up their Licences, the Secretary at War is become extremely anxious that some steps should be taken to put a stop to a proceeding so evidently injurious to his Majesty's Military Service. It is submitted that each of them may be convicted in the penalty given by the 68th Section of the Mutiny Bill, for it is too absurd to suppose that by

[1] Law Officers' Opinions, 1793, Vol. 723, p. 11.

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taking down their Signs, &c., upon the approach of Troops, they can so immediately get rid of the character of a Victualler, &c., as to exempt them from the burthen imposed by the Act. At all events, it appears to us that their taking such steps in a Body must be considered as an unlawful combination, and punished as a great misdemeanour.

"The Secretary at War requests the opinion of the Attorney and Solicitor General whether the Constables and Magistrates are not by Law bound to quarter and billet the Soldiers in the houses of Victuallers, &c., notwithstanding they, on the approach of Troops, may have pulled down their Signs and in a Body surrendered their Licences. And if the Constable or Magistrate should refuse to quarter and billet such Soldiers, or the Victuallers should refuse to receive, victual, and furnish such Soldiers as directed by the Act, may not be convicted in the penalty given by the 68th Section of the Mutiny Act? And if he cannot, then whether the Publicans pulling down their Signs and throwing up their Licences in a Body, is not an illegal combination, and punishable as a great misdemeanour? And he requests their advice what steps ought to be taken to punish such of the Publicans as may hereafter on the approach of Troops pull down their Signs and in a Body throw up their Licences and refuse them quarters."

"*Report.*

"We think a person who has obtained a Licence to keep a common Alehouse or Victualling house, and to sell victuals, beer, or other exciseable liquors in his house, must be deemed a Victualler, or person liable to have Soldiers billeted upon him within the meaning of the Mutiny Act, during the time specified in such Licence, unless he shall cease to occupy the house at all, or shall cease to occupy it for any of the purposes expressed in his Licence during the remainder of the term, meaning thereby to cease to carry on the Trade or Business of a Victualler, &c., in such house. If, therefore, the Victuallers and others mentioned in this case have ceased to occupy their respective houses for any purpose, or have forborne to use them for the purposes expressed in their respective Licences during the remainder of the Terms expressed in such Licenses, and have not applied for fresh Licences at the next licencing day, showing thereby that they ceased to be Victuallers, &c., in such houses not for a temporary purpose, but absolutely, we think they cannot be deemed to have acted unlawfully, unless their combination so to act can be deemed a crime. We think such a combination to distress the public Service an indictable offence;

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but as it is stated to us that the same thing has been frequently practised in former wars, and no prosecution has followed, it is far from improbable that an indictment would fail. We think Constables and Officers, described in the 24th Section of the Mutiny Act, cannot be required to take upon themselves to determine at the instant whether the acts of persons conducting themselves as stated in this case are colourable and fraudulent or not; and that therefore such Constables or Officers cannot be subjected to the penalty for refusing to quarter and billet soldiers on such persons, under the 68th Section of the Mutiny Act. If Victuallers, or other persons liable to have Soldiers billeted on them, shall refuse to receive Soldiers actually billeted by the proper Officer according to the Act, they are liable to the penalty for such offence given by the 68th Section, upon conviction before a Justice of the Peace; and such Justice may try the question whether the person so billeted upon, was, under the circumstances, liable to be billeted upon or not; and consequently to try the question whether such person really ceased to be a Victualler, &c., or not. But it will probably be difficult to succeed in an attempt to obtain such conviction, unless the case shall appear to be very gross; and, upon the whole, we venture to suggest that the most advisable measure will be to apply to Parliament for proper regulations on the subject.

"JOHN SCOTT,
"JOHN MITFORD."

"26*th Nov.* 1793."

## ( LXVII. )

*Chapter* XI., *par.* 43.

(1) LETTER[1] FROM SECRETARY AT WAR AS TO PUBLICANS' TAKING DOWN THEIR SIGN BOARDS, &C., TO AVOID THE BILLETS OF SOLDIERS.

"To COLONEL BUTLER, "*Whitehall*, 25 *Oct.*, 1688.

"I have acquainted his Majesty with what you write in your letter to me, in answer to which I am to lett you know his pleasure that those houses that have in that manner pulled down their Signes to avoid the quartering of the Dragoons under your command, are

[1] War Office Letter Bk., p. 107.

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nevertheless to bear their equal proportions, lest others might follow their example at this time when every one ought to be assisting in his Majesty's service.

"His Majesty has withall given orders that the Quarters of your Regiment be enlarged to Colebrook and places adjacent which will conveniently hold five Troops, and may immediately receive such a proportion as you shall think, according to the enclosed Order.

"As to your entering into English Pay, his Majesty has ordered My Lord Ranelagh, Paymaster of the Forces, to pay you what shall be necessary upon account untill his Majesty shall know from the Earl of Terconnel what has been received in Ireland.

"W. B."

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(2.) LETTERS[1] AS TO THE COMPLAINTS OF PUBLICANS AND OTHERS IN REGARD TO THE BILLETING OF SOLDIERS.

"SIR, "*Whitehall*, 19*th January*, 17$\frac{1}{2}$."

"His Majesty having received several complaints that the constables and civil magistrates have in divers places absented themselves from their habitations purposely to avoid giving the necessary directions for billetting the troops upon their march, and that they sometimes refuse, and often make many unnecessary delays and neglects in doing their duty herein, to the great prejudice of His Majesty's Service, and that in other places they have designedly made very unequall distributions of the soldiers upon the inhabitants where they are quartered, to the great uneasiness and oppression of His Majesty's subjects:

"His Majesty thinks it necessary that when the next Bill is brought into Parliament for regulating his Forces, such a clause or clauses should be prepared ready to be offered to be inserted in it as you judge may be most effectuall to prevent the like inconveniences and abuses for the future.

"I am likewise to acquaint you that the invalid out-pensioners belonging to the Royal Hospitall at Chelsea, by reason they do not think themselves at present subject to martial law, are frequently very mutinous and disorderly, and many of the garrisons in Great Brittain being now garrisoned by companys formed out of the said invalids, it is very necessary that in order to keep them to the due performance of their duty, as well as for the good government of

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[1] Letter Bk. 146, p. 21.

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the rest, they should by the next Act of Parliament be made subject to the martial law in the same manner as His Majesty's established Forces.

"I am, &c.,

"*Attorney-General.*" "WILLIAM PULTENEY."

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(3.) LETTER[1] OF SECRETARY AT WAR AS TO MEETING OF MEMBERS OF BOTH HOUSES OF PARLIAMENT RELATIVE TO THE MUTINY BILL.

"SIR, "24 *Jan.*, $17\frac{4}{5}\frac{0}{1}$.

"As I believe it will be absolutely necessary to make some alterations in the Mutiny Bill for the more effectively obliging the Public Houses to quarter Soldiers, and as a meeting for that purpose is intended to be had of some of the Members of both Houses to consider thereof, and I being desired to take your opinion and that of Mr. Solicitor-General previous to that meeting, I desire to know when I may wait upon you and Mr. Solicitor for that purpose the beginning of next week, it being a matter that cannot be delayed.

"I am, &c.,

"*Hon. Sir Dudley Ryder, Knt.*, "WM. YONGE."
"*His Majesty's Attorney-General.*"

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# ( LXVIII. )

*Chapter* XI., *par.* 59.

MEMORANDUM SHOWING THE ORIGIN OF THE "ALLOWANCE FOR MEN ON A MARCH," AND THE SEVERAL ALTERATIONS WHICH HAVE BEEN MADE IN THE RATE THEREOF, AT DIFFERENT DATES, TO 14TH MAY, 1858.

THIS allowance was first granted in South Britain by the Act of 35 Geo. III., c. 64, dated 19 May, 1795.

Previously to the passing of that Act, the innkeeper was wholly paid by the soldier, whether in stationary quarters or on a march; viz.:—

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[1] Letter Bk. 36, p. 276.



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By cavalry .. .. .. .. .. .. .. 6*d.* a-day.
By infantry .. .. .. .. .. .. .. 4*d.* ,,

At this time the pay of the soldier was:—

In cavalry .. .. .. .. .. .. .. 8*d.* a-day.
In infantry .. .. .. .. .. .. .. 6*d.* ,,

So that, after paying for his diet and small beer, the same residue remained for the soldier, whether of the cavalry or infantry; viz., 2*d.* a-day.

SUMMARY of the several Changes in this Allowance.

| | | Paid by the Soldier. | Paid by the Public. | Total received by the Innkeeper. |
|---|---|---|---|---|
| | | *s. d.* | *s. d.* | *s. d.* |
| Previously to 19th May, 1795 .. .. .. .. | Cavalry | 0 6 | .. | 0 6 |
| | Infantry | 0 4 | .. | 0 4 |
| From 19th May, 1795 .. | Cavalry | 0 6 | 0 4 | 0 10 |
| | Infantry | 0 4 | 0 6 | 0 10 |
| From March, 1800 .. .. | Cavalry | 0 7 | 0 3 | 0 10 |
| | Infantry | 0 5 | 0 5 | 0 10 |
| From 16th May, 1800 .. | Cavalry | 0 7 | 0 9 | 1 4 |
| | Infantry | 0 5 | 0 11 | 1 4 |

| | | Paid by the Public. | | |
|---|---|---|---|---|
| | | To the Innkeeper for the Hot Meal. | To the Soldier. | Total paid by the Public. |
| | | *s. d.* | *s. d.* | *s. d.* |
| From 25th June, 1810 .. | Cavalry | 0 8 | 0 1 | 0 9 |
| | Infantry | 0 8 | 0 3 | 0 11 |
| From 25th June, 1813 .. | Cavalry | 1 2 | 0 1 | 1 3 |
| | Infantry | 1 2 | 0 3 | 1 5 |
| From 25th July, 1815 .. | Cavalry | 1 0 | 0 1 | 1 1 |
| | Infantry | 1 0 | 0 3 | 1 3 |
| From 21st May, 1816 .. | Cavalry | 0 10 | 0 1 | 0 11 |
| | Infantry | 0 10 | 0 3 | 1 1 |
| From 25th April, 1821 .. | Cavalry | 1 0 | 0 1 | 1 1 |
| | Infantry | 1 0 | 0 3 | 1 3 |
| From 24th March, 1830 .. | Cavalry | 0 10 | 0 1 | 0 11 |
| | Infantry | 0 10 | 0 3 | 1 1 |

The above details refer to South Britain. As regards North Britain, the allowance on the march continued the same from 1800, at 3*d.* a-day each soldier for cavalry, and 5*d.* for infantry, payable to the soldier himself, who found his own food, until 1857, when North Britain was assimilated to England.

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# ( LXIX. )

*Chapter* XIII., *par.* 1.

## Strength and Composition of the British Army.

### (1.) *Active Regular Forces.*

| Description of Forces. | Officers. | Non-Commissioned Officers and Men. | Total. | Horses. | | Guns. |
|---|---|---|---|---|---|---|
| | | | | Officers'. | Troop. | |
| General staff (exclusive of officers included regimentally) | 74 | — | 74 | — | — | — |
| Cavalry. Life and Horse Guards, 3 regiments | 99 | 1,218 | 1,317 | 240 | 825 | — |
| Cavalry. Dragoons, 10 regiments; Lancers, 5 regiments; Hussars, 13 „ | 930 | 14,502 | 15,432 | 2,215 | 11,123 | — |
| Total cavalry | 1,029 | 15,720 | 16,749 | 2,455 | 11,948 | — |
| Artillery. Horse, 30 batteries | 278 | 4,781 | 5,059 | 590 | 4,916 | 180 |
| Artillery. Field, 68 batteries | 485 | 9.791 | 10,280 | 102 | 6,120 | 408 |
| Artillery. Garrison, 116 „ | 707 | 9,897 | 10,604 | 99 | — | — |
| Artillery. Mixed, 119 „ | 161 | 2,218 | 2,379 | 39 | 1,100 | 60 |
| Total artillery | 1,631 | 26,687 | 28,322 | 830 | 12,136 | 648 |
| Engineers. Officers | 774 | — | 774 | — | — | |
| Engineers. 40 companies | — | 3,818 | 3,818 | — | — | |
| Engineers. 2 troops, train | — | 474 | 474 | — | 307 | |
| Total engineers | 774 | 4,292 | 5,066 | — | 307 | |
| Military Train | 94 | 1,704 | 1,798 | 34 | 996 | |
| Infantry. Guards, 7 battls. | 257 | 5,696 | 5,953 | 41 | — | |
| Infantry. Line, 141 „ | 5,837 | 115,482 | 121,329 | 1,036 | — | |
| Total infantry | 6,094 | 121,178 | 127,282 | 1,077 | — | |
| Commissariat, officers | 206 | — | 206 | — | — | — |
| „ staff corps | 1 | 600 | 601 | — | — | — |
| Medical department, staff. | 291 | — | 291 | 123 | — | — |
| Purveyors' department | 86 | — | 86 | — | — | — |
| Army Hospital Corps | 1 | 999 | 1,000 | — | — | — |
| Chaplain's department | 83 | — | 83 | 85 | — | — |
| Military Store Department | 193 | — | 193 | — | — | — |
| Military store staff corps | 1 | 299 | 300 | — | — | — |
| Veterinary Department | 14 | — | 14 | — | — | — |
| Total | 10,762 | 173,972 | 184,544 | 5,501 | 25,250 | 648 |



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## (2.) *Depôt and Garrison Troops in the United Kingdom.*[1]

| | Description of Forces. | Officers. | Non-Commissioned Officers and Men. | Total. | Horses. | | Guns. |
|---|---|---|---|---|---|---|---|
| | | | | | Officers'. | Troop. | |
| | Recruiting staff . . . . | 22 | 51 | 73 | 17 | — | — |
| Cavalry. | Staff of depot . . . . | 11 | 12 | 23 | 51 | — | — |
| Cavalry. | Depôts of 11 regiments stationed in India . | 44 | 770 | 814 | 77 | 300 | — |
| | Total cavalry . . . | 55 | 782 | 837 | 128 | 300 | — |
| Artillery. | Depôt brigade . . . | 38 | 1,272 | 1,310 | 16 | 18 | — |
| Artillery. | Depôts of artillery stationed in India . . | 13 | 1,410 | 1,423 | 6 | 160 | — |
| Artillery. | Coast brigade . . . | 29 | 1,714 | 1,743 | 1 | — | — |
| Artillery. | Riding establishment . | 7 | 218 | 225 | 9 | 122 | — |
| | Total artillery . . | 87 | 4,614 | 4701 | 32 | 300 | — |
| Infantry. | Staff of 15 depôt battls. | 109 | 118 | 227 | 49 | — | — |
| Infantry. | Line . . . . . | 312 | 6,768 | 7,080 | — | — | — |
| Infantry. | Highland . . . . | | | | | | |
| Infantry. | Rifles . . . . . | | | | | | |
| | Total infantry . . | 421 | 6,886 | 7,307 | 49 | — | — |
| | Barrack establishment . . | 96 | 367[1] | 463 | — | — | — |
| | Schoolmasters not included regimentally . . . . | — | 91 | 91 | — | — | — |
| | Total . . . . . | 96 | 458 | 554 | — | — | — |
| | Grand total . . . | 681 | 13,158 | 13,834 | 226 | 600 | — |

[1] Exclusive of labourers and care-takers.

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(3.) *Colonial Regiments and Corps.*

| Description of Forces. | Officers. | Non-commissioned Officers and Men. | Total. | Horses. | | Field Guns. |
|---|---|---|---|---|---|---|
| | | | | Officers'. | Troop. | |
| *British.* | | | | | | |
| Cape mounted riflemen, 1 regiment . . . . . | 28 | 526 | 554 | 67 | 450 | — |
| Royal Canadian rifles, 1 regiment . . . . . | 52 | 1,297 | 1,349 | 8 | — | — |
| *Foreign and Coloured.* | | | | | | |
| West India regiments, 4 regiments . . . . . | 196 | 3,272 | 3,468 | 28 | — | — |
| Ceylon rifle regiment . . | 52 | 1,324 | 1,376 | 8 | — | — |
| African artillery . . . . | — | 64 | 64 | — | — | — |
| Royal Malta Fencible artillery (garrison artillery) | 25 | 614 | 639 | 4 | — | — |
| Hong Kong Corps[1] . . . | 17 | 659 | 676 | 4 | — | — |
| Total . . . . . | 370 | 7,756 | 8,126 | 119 | 450 | — |

The St. Helena regiment, the Royal Newfoundland companies, the Falkland Islands company, the Gold Coast artillery corps, and 5th West India regiment have lately been disbanded.

[1] Included in Army Estimates, but not yet raised.

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## (4.) *Local Troops in British India.*

| Description. | Composition. | Europeans. | | Natives. | | Total. | Horses. | | Field Guns. |
|---|---|---|---|---|---|---|---|---|---|
| | | Officers. | Non-commissioned Officers and Men. | Officers. | Non-commissioned Officers and Men. | | Officers'. | Public. | |
| **SUMMARY.** | | | | | | | | | |
| Staff exclusive of Regmtl. Officers | — | 286 | — | 2 | — | 288 | — | — | — |
| Staff Corps[1] . . | — | — | — | — | — | — | — | — | — |
| Medical Department[2]. . . . | — | 518 | 792 | 22 | — | 1,332 | — | — | — |
| Commissariat Department[3] . | — | 89 | 90 | — | — | 179 | — | — | — |
| Barrack Masters | — | 50 | — | — | — | 50 | — | — | — |
| Ecclesiast. Est. . | — | 172 | — | — | — | 172 | — | — | — |
| Infantry, regular | 118 regiments, 1 comp. | 1,251 | 108 | 1,963 | 81,593 | 81,915 | — | — | — |
| „ local, &c. | 28 regiments, 1 comp. | 115 | 28 | 445 | 19,712 | 19,158 | — | — | — |
| Cavalry, regular | 29 regiments, 2 troops. | 234 | 65 | 453 | 14,102 | 13,950 | — | — | — |
| „ local, &c. | 19 regiments, 4 troops. | 70 | — | 470 | 9,095 | 9,635 | — | — | — |
| Artillery, regular | 9 batteries. | 18 | 130 | 34 | 590 | 772 | — | — | 8 |
| „ local . | 12 batteries. | 23 | 14 | 28 | 1,260 | 1,325 | — | — | 40 |
| Sappers and miners, regular | 25 companies. | 45 | 177 | 50 | 2,764 | 3,036 | — | — | — |
| Sappers and miners, irregular. | 2 companies. | 2 | 4 | 4 | 202 | 212 | — | — | — |
| Total . . | | 2,872 | 1,347 | 3,481 | 129,318 | 137,020 | — | — | 48 |

[1] The Staff Corps includes 1400 officers in Bengal, 503 in Bombay, and 782 in Madras. Many of them are attached to regiments, and others are employed in the Adjutant and Quartermaster-General's Departments, and in a variety of other offices, both military and civil.

[2] See 'Army of Great Britain,' p. 112.

[3] Ib., p. 106.

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## (5.) *Troops of Reserve in the United Kingdom.*[1]

| Description. | Officers. | Non-commissioned Officers and Men. | Total. | Horses. | | Field Guns. |
|---|---|---|---|---|---|---|
| | | | | Officers'. | Troop. | |
| Army of Reserve in Great Britain.. | — | 1,851 | 1,851 | — | — | — |
| Army of Reserve in Ireland.. | — | 230 | 230 | — | — | — |
| Enrolled Pensioners in Great Britain.. | 60 | 8,456 | 8,516 | — | — | — |
| Enrolled Pensioners in Ireland.. | 26 | 4,786 | 4,812 | — | — | — |
| **MILITIA.** | | | | | | |
| England and Wales. Infantry, 79 regiments / Artillery, 14 regiments | 1,601 | 58,089 | 59,690 | — | — | — |
| Scotland.. Infantry, 11 regiments / Artillery, 5 regiments | 225 | 8,644 | 8,869 | — | — | — |
| Ireland .. Infantry, 25 regiments / Artillery, 12 regiments | 652 | 23,626 | 24,278 | — | — | — |
| Channel Islands. Artillery, 3 corps .. | — | — | 1,437 | — | — | 38 |
| Channel Islands. Infantry, 10 regiments | — | — | 6,082 | — | — | — |
| Total Militia, &c. .. | — | — | 115,765 | — | — | — |
| Yeomanry cavalry, 49 corps .. .. .. .. .. | 1,003 | 13,265 | 14,268 | 1,003 | 13,265 | — |
| **VOLUNTEERS.** | | | | | | |
| Staff .. .. .. .. .. | 12 | — | 12 | — | — | — |
| Adjutants .. .. .. .. | 280 | — | 280 | — | — | — |
| Honourable Artillery Company, London .. | 3 | 869 | 901 | 11 | 51 | 6 |
| Light Horse .. .. .. .. | — | — | 830 | — | — | — |
| Artillery .. .. .. .. | — | — | 32,010 | — | — | 76 |
| Engineers .. .. .. .. | — | — | 4,823 | — | — | — |
| Mounted Rifles .. .. .. | — | — | 433 | — | — | — |
| Rifles .. .. .. .. .. | — | — | 139,961 | — | — | — |
| Total Yeomanry and Volunteers | — | — | 193,523 | — | — | 82 |

[1] According to Establishment for 1866-7, see 'Army of Great Britain,' p. 120.

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## ( LXX. )

*Chapter* XIII., *par.* 26.

### Warrant[1] giving Military Rank to the Royal Artillery.

"George R.

"Whereas we have *lately* been pleased to sign divers Commissions for the Officers of Our Royal Regiment of Artillery, and it being Our Royal intention that the Officers of Our said Regiment shall take rank in Our Army according to the dates of their respective Commissions, whether signed by us, our Master-General of Our Ordnance, &c., Our Will and Pleasure therefore is that the Officers of Our Royal Regiment of Artillery do upon all occasions take rank as follows, viz.:—

| | | |
|---|---|---|
| "Colonel Commandant .. | as .. | Colonel. |
| Lieutenant-Colonel .. | „ .. | Lieutenant-Colonel. |
| Major .. .. .. .. | „ .. | Major. |
| Captains .. .. .. .. | „ .. | Captains. |
| Captain-Lieutenants .. | „ .. | Captain-Lieutenant. |
| First Lieutenants .. .. | „ .. | Lieutenant. |
| Second-Lieutenants .. | „ .. | Second Lieutenants. |
| Lieutenant Fireworkers | „ .. | Ensigns. |

"And of this Our Royal Will and Pleasure all Officers Civil and Military whom it doth or may concern, are to take Notice and govern themselves accordingly.

"Given at our Court of St. James's, this 30th day of April, 1751, in the twenty-fourth year of Our Reign.

"By his Majesty's Command,

"H. Fox."

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## ( LXXI. )

*Chapter* XIV., *par.* 6.

### Report as to the Displacement or Resignation of Militia Officers by or to the Lord-Lieutenant.

"*Queries.*

"19*th September*, 1804.

"1. Whether by the Militia laws an Officer in the Militia can, when his Regiment is not called out and embodied, resign his Commission

[1] 299 MS. Warrants, p. 25.

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to the Lieutenant of the County, and the Lieutenant of the County accept the same, without his Majesty's pleasure being first signified to him thereon?

"2. Whether such resignation of a Commission in a Regiment of Militia can be so made and accepted, when such Regiment of Militia is called out and embodied by his Majesty's Warrant, and when by the 111th clause of the last general Militia Act such regiment becomes subject to the Mutiny Act and Articles of War?"

"*Report.*

"*October*, 1804.

"1. By the 2nd Section of the General Militia Act the nomination of Officers and the grant of their Commissions, rest with the Lord-Lieutenant, the power of rejection only of any individual named by him being reserved to the King. By the 17th Section his Majesty may direct the discharge of any Officer. The King is not, however, to do it of his own act, but is to signify his pleasure to the Lieutenant to displace such Officer. These clauses, however, do not apply to the resignation of Officers, nor can any be found that do. The intervention of his Majesty respecting the Commissions of Officers is therefore confined, as far as express provision goes, to the rejection or displacing, through the Lieutenant, of any persons of whom his Majesty may disapprove, and as it is from the Lord-Lieutenant that the Officer receives his appointment and Commission it is thought that it is to the Lord-Lieutenant he is to surrender and resign it.

"2. By the 111th Section, from the time of the Militia being embodied and called out, it is subject to the Mutiny Act and Articles of War; but this provision, it is apprehended, does not at all interfere with the manner in which either Officer or Soldier is procured to or continued in the service. The Officers' Commissions must still be granted in the same manner as if they were not called out, and their discharges also from the service must equally go through the Lord-Lieutenant. It is conceived, therefore, whatever may be the inconvenience or mischief of reposing this power in the Lord-Lieutenant, it requires the interposition of Parliament to restrain or abridge it.

"Spencer Perceval,
"T. Manners Sutton."

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# ( LXXII. )

*Chapter* XIV., *par.* 8.

## Commission of a Lord-Lieutenant.

*Extract from 5th Part Patent Roll of the Nineteenth Year of the Reign of Queen Victoria.*

"*Commission of Lieutenancy. Kent and City of Canterbury and County of the said City.*
Viscount Sydney.

VICTORIA, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith: To Our Right Trusty and Well-beloved Cousin and Councillor, John Robert Viscount Sidney, Greeting: Whereas, by a certain Act of Parliament made in the forty-second year of the Reign of His late Majesty King George the Third, intituled, 'An Act for amending the Laws relating to the Militia in England, and for augmenting the Militia,' and by the authority of the same, it was enacted (amongst other things) that his said late Majesty, his heirs and successors, might and should from time to time constitute and appoint Lieutenants for the Counties, Ridings, and Places thereinafter mentioned. And that the several Lieutenants so appointed should have full power and authority, and were thereby required to call together, arm, array, and cause to be trained and exercised such persons, and in such manner as is thereinafter directed, once in every year. And that the said Lieutenants severally should from time to time constitute and appoint such persons as they should think fit, being qualified as thereinafter is directed, and living within their respective Counties, Ridings, and Places to be their Deputy-Lieutenants (the names of such persons having been first presented to and approved by his said late Majesty, his heirs or successors), and should also appoint a proper number of Colonels, Lieutenant-Colonels, Majors, and other Officers, qualified as thereinafter directed to train, discipline, and command, the persons, to be so armed and arrayed according to the rules, order, and directions thereinafter mentioned, and should certify to his said late Majesty, his heirs or successors, the names and ranks of all such Officers so to be appointed. And that in case his said late Majesty, his heirs or successors, should within fourteen days after such Certificate should have been laid before him or them, signify his or their disapprobation of any of the persons so to be appointed, it should not be lawful for the said Lieutenants to grant a Commission to any person

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so disapproved, but Commissions should be granted to all such persons who should not be disapproved by his said late Majesty, his heirs or successors, as by the said Act (amongst several other powers and authorities in the same contained and specified) may more fully and at large appear. Now know you that we, by virtue of the said Act of Parliament, and for the better execution of the same, and of the powers and authorities in the same Act contained and specified, have nominated, made, and appointed, and by these presents do nominate, make, and appoint you, the said John Robert Viscount Sidney, our Lieutenant of and in Our County of Kent and Our City of Canterbury, and County of the said City, and of and in all Cities, Boroughs, Liberties, Places incorporated and privileged, and other places, whatsoever, within Our said County of Kent and City of Canterbury, and County of the said City, and the limits and precincts of the same, for and during Our pleasure, in the room of George Augustus Earl Cowper, deceased. And we do by these presents give and grant unto you full power and authority to do, execute, transact, and perform all and singular the matters and things in and by the said Act of Parliament, or any other Law now in force, enacted, declared, or contained which, to such Lieutenants to be nominated or constituted by Us, by force of the said Act of Parliament or other Law, do in anywise belong to be done, executed, transacted, or performed. And, therefore, we do hereby command you that, according to the tenor of these Our Letters Patent, and the form and effect of the said Act of Parliament, or other Law in that behalf, you proceed and execute all those things with effect.

"In witness, &c., the tenth day of June.

"By Her Majesty's Command."

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# ( LXXIII. )

*Chap.* XIV., *par.* 74.

TABLE SHOWING IN COLUMN (A) THE TOTAL OF CASUALTIES, AND IN COLUMN (B) THE TOTAL OF ENLISTMENTS IN THE REGULAR ARMY FOR EACH YEAR, FROM 1803 TO 1813.

| Date | (A.) Total of Casualties in the British Army (including Foreign and Colonial Corps), by Death, Discharges, and Desertions. | (B.) Men raised for the Regular Army (exclusive of Foreign and Colonial Corps). Return dated, 13th March, 1813. |
|---|---|---|
| 1803 | 16,070 | 11,253 |
| 1804 | 16,185 | 11,088 |
| 1805 | 18,243 | 33,545 |
| 1806 | 16,731 | 20,677 |
| 1807 | 17,538 } | 61,185 |
| 1808 | 20,886 } | |
| 1809 | 24,567 } | 44,700 |
| 1810 | 22,953 } | |
| 1811 | 22,460 | 22,959 |
| 1812[1] | 25,498 | 24,359 |
| 1813[2] | 24,455 | 20,119 { from 25th Dec., 1812, to 25th Sept., 1813.[3] |

*Made up thus*:—Ordinary recruiting .. .. .. 134,316
Additional Force Act .. .. 15,780
Militia Volunteers[4] .. .. 92,756
249,851

[1] 69 Com. Journ., p. 635. [2] Ib., p. 639. [3] Ib., p. 635.

[4] Add under 12th Sec. of 54 Geo. III., c. 1., return of 17th Feb., 1814, p. 638 .. .. .. .. .. .. .. 9,603
Return of 14th March, 1815, to 25th Dec., 1814,[5] 70 Com. Journ., p. 607 .. .. .. .. .. .. .. 1,574
11,177

[5] None permitted to volunteer after 25th Dec., 1814, 71 Com. Journ., p. 631.

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# ( LXXIV. )

*Chapter* XIV., *par.* 87.

## Report as to the Service of the Militia under the General and other Officers in His Majesty's Regular Army.

"*Statement.*

"The Militia have been *embodied* under the 95th Section of the Militia Act, 26 Geo. III., c. 107, *and put under the command of General Officers*, who have certain districts assigned to them, and authority to move the troops in their respective districts from and to any places within the same.

"It happens that in most, if not in all, of the districts there are certain Forts, or Fortified Garrisons, to the peculiar command of which Governors and Lieutenant-Governors are appointed by his Majesty's Commission, who have not necessarily the rank of General Officers.

"A question has arisen whether the Militia can by law be employed in any of those Forts or Garrisons where the Governor or Lieutenant-Governor resides, and *is not a General Officer*, the authority of such Governor and Lieutenant-Governor being superior, *within the limits of his Fort or Garrison*, to that of a General Officer on the Staff, who exercises his command by virtue of his rank in the Army, according to the accustomed rules of the service, and not by Special Commission from the King.

"Another question has arisen, whether an Officer not a General Officer, *having the King's Special Commission* to command in any given situation, but still subject, by the express words of such Commission, to the authority of the General Officer of the district which includes that situation, can exercise his command over embodied Militia within the limits thereof.

"Upon both these points the Opinion of the Attorney and Solicitor-General is earnestly requested to be given with all practicable dispatch."

"*Opinion.*[1]

"The Militia Forces, when drawn out and embodied on the

[1] The same view was expressed by the same Law Officers, though at greater length, in April, 1801; Bk. 724, p. 262.

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emergencies specified in the Act, may be led by their Officers to any part of the Kingdom, and may therefore be led into any Fort or Garrison, or into any District, or part of a District; and when any Militia forces happen to be within any such place, we think they must be subject to the command of the person having the chief command in that place, by virtue of his Majesty's Special Commission, although such person shall not have the rank in the Army of a General Officer, as we think it must be implied, from the terms of the Act, that the Militia, when drawn out and embodied, are to be subject to the like command within the Kingdom as his Majesty's Forces liable to serve out of Great Britain are subject to.

"JOHN SCOTT.
"JOHN MITFORD."

"*Lincoln's Inn*, 17*th Aug.*, 1797."

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*Chap.* XIV., *par.* 91.

## Summary of Return relating to the Militia in 1867.[1]

| Year 1867. | Establishment. | | | Present at Training, 1867. Day of Inspection. | | | Absent from Training, 1867, Day of Inspection. | | | | | | Wanting to Complete, 1867.[2] | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | Officers. | Noncommissioned Officers. | Privates. | Officers. | Noncommissioned Officers. | Privates. | Officers with Leave. | Officers without Leave. | Noncommissioned Officers with Leave. | Noncommissioned Officers without Leave. | Privates with Leave. | Privates without Leave. | Officers. | Noncommissioned Officers. | Privates. |
| England and Wales | 3,053 | 3,324 | 83,460 | 1,625 | 2,986 | 54,225 | 228 | 14 | 17 | 3 | 1,195 | 3,518 | 1,186 | 321 | 24,529 |
| Scotland .. .. .. | 432 | 441 | 10,452 | 234 | 429 | 8,232 | 35 | 2 | — | 1 | 120 | 441 | 161 | 19 | 1,673 |
| Ireland .. .. .. | 1,201 | 1,262 | 30,710 | — | Not Trained. | | — | — | — | — | — | — | — | — | — |
| Total .. .. | 4,686 | 5,027 | 124,622 | 1,859 | 3,415 | 62,457 | 263 | 16 | 17 | 4 | 1,315 | 3,959 | 1,347 | 340 | 26,202 |

[1] The Militia for 1869-70 will stand on a larger Establishment (say 91,352 men). The Re-engaged men number (say 41,318), and 12,788 other men will probably re-engage. The division into Barracks or Billets (lodging money) will be 14,911 as against 78,729 men.

[2] The full Establishment of Officers has been given, whereas all appointments of Ensigns (Second Lieutenants in Artillery Corps) have been suspended since July, 1860; two Supernumerary Lieutenants in lieu thereof being allowed to each Regiment.

The large number of "Privates wanting to Complete," is chiefly caused by the reduction made in August, 1864, in the Effective Strength of all Regiments whose Establishments exceed 600 Privates.



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## ( LXXVI. )

*Chapter* XIV., *par.* 105.

REPORT[1] AS TO THE POWER OF VOLUNTEER OFFICERS TO RESIGN THEIR COMMISSIONS.

"*Query.*

"*6th June*, 1804.

"WHETHER Officers of Volunteer Corps, whose services have been accepted by his Majesty, under the late Acts, can resign their Commissions at their own discretion, without his Majesty's previous consent?"

"*Report.*

"*12th June*, 1804.

"Officers in Volunteer Corps, of the description mentioned, are at liberty to resign their Commissions without the previous consent of his Majesty, the 30th Section of the 44 Geo. III., c. 54, expressly enacting 'That it shall be lawful for any person enrolled in any Corps of Yeomanry or Volunteers at any time (except as therein excepted) to quit such Corps,' which provision appears to include every enrolled member of the Corps, and that the Officers are equally with the other members entitled to the benefit of it.

"SPENCER PERCEVAL,
"THOMAS MANNERS SUTTON."

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## ( LXXVII. )

*Chapter* XIV., *par.* 117.

CASE[2] RESPECTING ALLOWANCE TO BE MADE TO CORPS OF YEOMANRY CAVALRY ON THEIR BEING CALLED OUT.

"THE Opinion of the Attorney and Solicitor-General is required:—

"Whether the Act, 44 Geo. III., c. 54, secs. 22, 23, 36, and 39, applies to cases of Corps called out by Magistrates for the suppression of Riots, or only in cases of Invasion or Insurrection, or Rebellion upon threatened Invasion?"

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[1] Book B, pp. 27, 28.

[2] Bk. 4, pp. 317, 358.

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"*Lincoln's Inn*, 15*th June*, 1821.

"We are of opinion that the Act does not apply to cases where Corps are called out by Magistrates for the suppression of riots.

"R. GIFFORD.
"J. S. COPLEY."

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## ( LXXVIII. )

*Chapter* XIV., *par.* 135.

### EXTRACTS FROM THE LATE LORD CASTLEREAGH'S CABINET MEMORANDA AS TO THE CREATION OF RESERVE FORCES.

"THE subject presents for solution perhaps the most difficult problem of any to be found in the successive gradation of problems which the general system of defence presents.

"1. The finances of the country will not admit of its being done upon the principle of offering an equivalent in money to each individual, for the sacrifice of time and labour connected with its accomplishment. Mr. Windham very inconsiderably attempted this: had his measure been acted upon, it would, notwithstanding its expense, have been found severely burdensome to individuals, and the fruits, in a military point of view, would have been in no degree commensurate either with the individual or public charge and sacrifice attendant upon it.

"2. It is impossible to bring the people together, even though paid, so frequently as is required for military instruction without great personal inconvenience, great loss of time, and great confusion in some places, where the population is numerous; while, in other places, the number of persons to be found within the distance of five miles, as limited by the Act, is too inconsiderable to admit of any arrangement being made for their instruction. Still less is it practicable to get over all these difficulties within the short space of twelve months, for which alone the individuals now balloted have to be trained.

"3. Large bodies of men cannot be frqeuently brought together either with safety or utility, unless previously officered and organised. Officers cannot be conveniently found for such a large number, nor can the civil power be brought forward, without rendering it ridiculous, to supply their want, and to execute a duty for which peace-officers are so little qualified.



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"The following principles are suggested as the basis of the proposed system of training:—

"That learning the use of arms should be imposed as a *positive duty* upon all individuals within certain ages — say between the ages of 18 and 30—to be enforced by fine.

"That the State should furnish the means and pay the expense of instruction, but not to allow any pay to those to be trained for attendance on drill, musters, &c.

"In order to put individuals to the least possible inconvenience, instead of compelling them to assemble at times and places that may be extremely inconvenient to them, to be drilled, they should be released from all such attendance, and should be required, however, in lieu thereof, to have themselves trained at their own times and places, in the manual and platoon exercises.

"In order to facilitate instruction, Government to employ and distribute in each county such a number of drill-serjeants as might be adequate gradually to instruct all the individuals within the military ages. These might consist of the permanent serjeants and corporals of the Sedentary Militia, of serjeants of Volunteer Corps, choosing to undertake the duty, or of any other individuals who might be approved as competent by the inspecting field officers and adjutants of the Sedentary Militia, to whom the control and superintendence of the whole system might be given.

"Men not certified as trained, to be mustered once in six months in their respective parishes; and, if found not drilled, to be fined 10*s*., the fine to be increased 10*s*. every succeeding half-yearly muster, till a certificate is obtained — the fine to be double on persons worth the sum of , or per year.

"By the above plan, properly modified, it is conceived training might soon become general, with very litle trouble to individuals and small expense to the public. Every man of the military age would feel that he *must* learn the use of the firelock: and his only consideration, in order to avoid fines, musters, &c., would be how he could do it soonest, and with least inconvenience to himself. Mutual convenience would soon induce neighbours to form themselves into squads, and to arrange with the drill-serjeants the hours and place of meeting. The serjeants having the object of profit in view, and the individuals that of qualifying themselves to obtain their certificates, would learn more in one parade of this kind than in several as usually regulated. Those who were compelled to appear repeatedly at musters would feel their ignorance a disgrace as well as an expense; and the knowledge of the firelock would soon be so diffused, that every man might almost learn it from his neighbour.

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"In order to ascertain that the men certified were qualified to act together, fewer than 12 men should not be instructed together for certificates. The serjeants would easily manage to bring forward their men for inspection in squads; and this would lead the people previously to form themselves into such small bodies as would be most favourable to instruction."

The minute then proceeds—

"If the above plan were adopted, our system of military defence in war might be constituted as nearly as follows:[1]—

*Troops in constant Pay.*

| | Men. |
|---|---|
| Regulars .. .. .. .. .. | 220,000 |
| Militia .. .. .. .. .. | 80,000 |
| Total .. .. | 300,000 |

*Regular Army.*

"The Regular Army to be kept up—

"1. By ordinary recruiting.

"2. By Volunteers from Sedentary Militia.

"3. By an establishment for the reception of boys who should pass two or three years in education, before they were attached to regiments. It is conceived that an institution of this description on a large scale might be adopted on very economical principles, to which both parents and parishes would be anxious to send their children, if they were assured that they would be previously educated, and not compelled to carry arms too soon. The term of service to boys so entering should certainly not exceed seven years from their attaining the age of eighteen. Schools for boys.

"With respect to all other recruits, they should have the option of entering for general service, either limited or unlimited in point of time. The former would be thrown principally into the second, the latter into the first battalions. The embarrassment and endless complexity of performing colonial and distant services by troops serving on short and determinable engagements would thus be, in a great degree, avoided, while the army would, at the same time, have the benefit of inviting into its ranks those who may be averse to enlist into it without some limitation of time. Recruits to select their service.

"The second battalions, though chiefly composed of men whose service was limited in point of time, would, nevertheless, be liable to be employed in any part of the world, should 2nd Battalions.

[1] Castlereagh Desp., vol. viii., pp. 121, 122.

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occasion require it; and should it be found at any time necessary during war to levy suddenly by ballot a large body of men for the regular army, it would not be difficult at the moment to appropriate either garrison or a limited selection of second battalions to receive them, from whence, though originally entering only for home service, they would gradually engage for a more extended description of service.

"The number of men directly or indirectly engaged by the above system in the public service would stand thus:[1]—

| | Men. |
|---|---|
| Navy, Marines, and Sea Fencibles .. .. | 150,000 |
| Line and Regular Militia, gross .. .. | 350,000 |
| Volunteers, Great Britain .. .. .. | 100,000 |
| „ Ireland .. .. .. .. | 80,000 |
| Sedentary Militia, gross, for England and Scotland .. .. .. .. .. | 300,000 |
| Trained Men ditto ditto .. | 400,000 |
| Serving, or liable to service in arms .. | 1,380,000 |
| Liable to civil service, under Defence Act, about .. .. .. .. .. | 2,000,000 |

the quarter of a population of 15,000,000 being generally reputed capable of bearing arms."

[1] Castlereagh Desp., vol. viii., p 124.

END OF VOL. I.

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